ORDINANCE NO. 4175-26

An ORDINANCE Adopting Periodic Update to the City of Everett's Critical Area Regulations, AMENDING EMC Chapters 19.04 and 19.37.

WHEREAS,

A. The City of Everett is updating its critical area regulations under Chapter 36.70A of the Revised Code of Washington and Chapter 365-190 of the Washington Administrative Code; and

B. The amendments contained in this resolution maintain consistency with the Growth Management Act and are consistent with its planning goals; and

C. The amendments contained in this resolution are consistent with and supportive of goals, policies, and implementation strategies in the Everett Comprehensive Plan, including:

1. Policy UF-41 Protect and connect the area's network of habitat areas and wildlife corridors, streams, parks, and tree canopy.

2. Policy UF-46 Designate, classify, and regulate protection of the following types of critical areas, consistent with state law and state agency rules: fish and wildlife habitat conservation areas, wetlands, frequently flooded areas, and geologically hazardous areas.

3. Policy UF-47 Incorporate Everett's environmental assets as important resources and components of the City's infrastructure systems. Utilize the multiple benefits of the City's ecosystem services, including economic impacts, pollutant reduction potential, carbon sequestration and the reduction of stormwater runoff.

4. Policy UF-48 Ensure that the city achieves no-net-loss of ecological functions over time and strive for net ecological gain.

5. Policy UF-49 Preserve, enhance, and connect a network of habitat areas and corridors, creeks, shorelines, parks, and tree canopies. Where possible, provide for public access in critical areas and their buffers when these activities provide valuable educational or recreational opportunity and can be designed in a manner that results in no net loss of functions and values.

6. Policy UF-50 Use the best available science for managing critical areas and natural resources and allow for updates to code as new information becomes available.

D. The Planning Commission reviewed the amendments contained in this resolution, including holding briefings on September 16, 2025, October 7, 2025, November 4, 2025, November 18, 2025, January 6, 2026, and February 17, 2026, and public hearings on November 18, 2025, and February 17, 2026; and

E. The Planning Commission considered the factors in EMC 15.03.300(C) in reviewing the proposed development regulation text amendments in this ordinance; and

F. The Planning Commission recommends, via Planning Commission Resolution 25-03, approval of the amendments contained in this ordinance, finding that the proposed amendments are consistent with the Everett comprehensive plan, bear a substantial relation to public health, safety and welfare, and promote the best long-term interests of the Everett community.

G. After the Planning Commission completed its work, city staff amended the proposal, at EMC 19.37.530, to reduce the maximum invasive species coverage in a vegetated buffer from 20% to 10%; and

H. The city's responsible official issued a Determination of Non-Significance under the State Environmental Policy Act on March 23, 2026; and

I. Notice of the proposed development regulation amendments was sent to the Washington State Department of Commerce on November 3, 2025, and a letter of receipt was provided the next day; and

J. Notice of updates to the proposal was sent to the Washington State Department of Commerce on March 20, 2026, and a letter of receipt was provided the same day; and

K. The amended development regulations contained in this ordinance maintain consistency with the GMA and are consistent with the GMA planning goals; and

L. The amended development regulations contained in this ordinance are consistent with and supportive of the Everett Comprehensive Plan; and

M. The development regulations amendments contained in this ordinance were prepared following the procedural requirements in RCW 36.70A and WAC 365-196; and

N. The development regulations amendments contained in this ordinance were prepared following the procedural requirements in EMC 15.02.095; and

O. The City Council considered the factors in EMC 15.03.300 in reviewing the proposed development regulations amendment in this ordinance and based approval, in part, on the following findings:

1. The proposed development regulation amendments are consistent with the Everett comprehensive plan;

2. The proposed development regulation amendments bear a substantial relation to public health, safety or welfare;

3. The proposed development regulation amendments promote the best long-term interests of the Everett community

P. On April 15, 2026, the Everett City Council held a public hearing, after proper notice, and considered public comment and the entire record related to the amendments contained in this ordinance.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 19.04.110 is hereby amended as follows, with strikeout text deleted and underlined text added.

19.04.110, CRITICAL AREAS DEFINITIONS

This section defines specific terms to be applied where used in Chapter 19.37 EMC.

"Agricultural activities, existing and ongoing" means those activities conducted on lands defined in RCW 84-34-020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conservation program.

"Alteration" means any human-induced action which impacts the existing condition of a critical area. Alterations include but are not limited to grading; filling; dredging; draining; channelizing; cutting, pruning, limbing or topping, clearing, relocating or removing vegetation; applying herbicides or pesticides or any hazardous or toxic substance; discharging pollutants; grazing domestic animals; paving, construction, application of gravel; modifying for surface water management purposes; compaction; excavation or any other human activity that impacts the existing vegetation, hydrology, wildlife or wildlife habitat of the critical area or its buffer. Alteration does not include walking, passive recreation, fishing or other similar activities.

"Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.

"Best Management Practices (BMPs)" are conservation practices or systems of practices and management measures that:

a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
c) Protect trees, vegetation, and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and

d) Provide standards for proper use of chemical herbicides within critical areas.

"Biological assessment" is an evaluation of the potential effects of a proposed action on listed and proposed species and designated and proposed critical habitat and determination whether any such species or habitat is likely to be adversely affected by the action.

"Biologist" means a person who has earned a degree in biological sciences from a college or university, with practical experience that includes at least two years' expertise in matters involving wetlands biology or stream ecology in the Pacific Northwest.

"Bog" ~~means wetlands with extensive living sphagnum moss or sphagnum peat and a distinctive flora that results from the acidic substrate.~~ See *Wetlands with special characteristics*

"Buffer" or "Buffer area" means ~~an area which provides the margin of safety through protection of slope stability, attenuation of surface water flows and erosion controls necessary to minimize risk to the public from loss of life or well-being or property damage resulting from natural disasters, or an area which is an integral part of the natural system and which provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland boundaries, habitat for wildlife and protection from harmful intrusion necessary to protect the public from losses suffered when the functions and values of important aquatic resources are degraded that is contiguous to and protects a critical area including vegetated areas~~ those areas, typically vegetated, adjacent to wetlands or other aquatic resources that can reduce impacts from adjacent land uses through various physical, chemical, and/or biological processes.

"Buffer management" means an activity proposed by a public agency, public utility, or private entity, and approved by the planning director, within a buffer required by this title, that is proposed to:

~~1~~A. Reduce or eliminate a verified public safety hazard;

~~2~~B. Maintain or enhance wildlife habitat diversity; or

~~3~~C. Maintain or enhance the fishery or other functions of stream, wetland, or terrestrial ecosystems.

~~"Buildable area" means the lot area minus undevelopable areas.~~

"Carbon sequestration" means the process of capturing and storing atmospheric carbon dioxide through biologic, chemical, geologic, or physical processes.

~~"Channel gradient" refers to a measurement over a representative section of at least five hundred linear feet, where available, with at least ten evenly spaced measurement points along the normal stream channel, but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds, and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States Geological Survey topographic maps (see Washington Forest Practices Board Manual, Section 23) or a more detailed survey specific to the project site and/or area.~~

"Compensatory mitigation" means the ~~replacement~~ restoration (re-establishment or rehabilitation), ~~enhancement~~ establishment(~~, or~~ creation) ~~of an undevelopable critical area equivalent in functions, values and size to those being altered or lost to development~~, enhancement and/or in certain circumstances preservation of wetlands, streams, or critical areas for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

"Compensatory mitigation, in-kind" means the replacement of wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

"Compensatory mitigation, off-site" means the replacement of wetlands away from the ~~lot~~site on which a ~~regulated wetland~~critical area has been impacted.

"Compensatory mitigation, on-site" means the replacement of wetlands on or adjacent to the ~~lot~~ site on which a ~~wetland~~ critical area has been impacted by a regulated activity.

"Compensatory mitigation, out-of-kind" means the replacement of wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

"Cowardin classification" means the classification system for wetlands developed in 1979 by the U.S. Fish and Wildlife Service and updated in 2013 that classifies wetlands based on water flow, substrate types, vegetation types, and dominant plant species.

"Creation" in the context of wetland mitigation means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland that did not previously exist at an upland site. Creation results in a gain in wetland area and functions. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

"Credit-Debit Method" means a tool to provide applicants and regulators a way to determine whether actions taken to mitigate an impact to wetlands will adequately replace the functions and values lost. It is based on the Washington State Wetland Rating System.

"Critical area" means geologically hazardous areas, wetlands, lakes, ponds, streams, frequently flooded (flood hazard) areas, ~~and~~ fish and wildlife habitat conservation areas, and critical aquifer recharge areas, as defined in Chapter 36.70A RCW and this ~~chapter~~ title.

"Critical area protective covenant" means a covenant granted for the protection of a critical area and its buffer through the maintenance of the natural environment. The covenant prohibits alteration of the area unless approved by the city consistent with this Title and must be duly recorded on appropriate documents of title and filed with the Snohomish County auditor.

"Critical area tract" means a legally created, nonbuilding lot containing a critical area which is subject to a critical area protective covenant and which shall be duly recorded on the appropriate documents of title and filed with the Snohomish County auditor.

"Critical aquifer recharge areas" means those areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

"Critical habitat" means the term defined and used in the Endangered Species Act. It is specific geographic areas that contain features essential to the conservation of an endangered or threatened species and may require special management and protection. Critical habitat may also include areas that are not currently occupied by the species but are needed for its recovery.

"Culvert" means a ~~short section of pipe placed in a stream and filled over in order to provide a stream crossing~~ water crossing structure that spans through a water course.

"Cumulative impacts" means the combined, incremental effects of human activity on critical area functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

"Development" means ~~all structures, uses or other alterations or modifications of the natural landscape occurring above or below ground or water on a particular lot. Within the riparian habitat zone or the special flood hazard area, the definition of "development" shall also include removal of substantial native vegetation, or alteration of natural site characteristics~~ a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of pilings; or any project of a temporary or permanent nature that modifies structures, land, wetlands, buffers, or shorelines and that does not fall within the allowable exemptions or exceptions contained in the City of Everett Municipal Code..

"Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

"Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

"Emergencies" mean those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventive action in a timeframe too short to allow for compliance with the requirements of the critical areas regulations.

"Enhancement" means ~~an action which increases the functions and values of a stream or wetland or terrestrial ecosystem~~ the manipulation of the physical, chemical, or biological characteristics of a wetland, stream, or buffer to heighten, intensify, or improve specific functions. Enhancement results in the gain of selected functions but may also lead to a decline in other functions. Enhancement does not result in a gain in wetland or buffer.~~.~~

"Erosion hazard areas" means those areas of the city with slopes of twenty-five percent and greater in Qva and Qal geologic units; exposed slopes of greater than twenty-five percent in other geologic units; and drainage areas which receive stormwater discharge. Erosion hazard areas include areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils.

"Establishment" See *Creation*

~~"Exotic" means any species of plant or animal that is nonnative to the subject lot or area.~~

"Fish habitat" or "habitat that supports fish life" means habitat, which is used by fish life at any life stage at any time of the year including potential habitat likely to be used by fish life, which could reasonably be recovered by restoration or management and includes off-channel habitat.

"Fish and wildlife habitat conservation areas" means an area of habitat that is necessary and suitable for maintaining individual species, species diversity, or biological diversity. Fish and wildlife habitat conservation areas include:

~~1. Habitats of primary association;~~

~~2. Streams/riparian corridors;~~

~~3. Continuous vegetative corridors linking watersheds;~~

~~4. Significant biological areas listed by the city; and~~

~~5. Lakes.~~

A. Areas where endangered, threatened, and sensitive species have a primary association;

B. Habitats and species of local importance, as determined locally;

C. Commercial and recreational shellfish areas;

D. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

E. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

F. Waters of the state, as defined in RCW 90.48.020;

G. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and

H. State natural area preserves, natural resource conservation areas, and state wildlife areas

I. Significant biological areas listed by the city

Fish and wildlife habitat conservation areas do not include irrigation delivery systems, irrigation infrastructure, irrigation canals or drainage ditches within the boundaries or maintained by a port or irrigation district or company.

"Frequently flooded areas" means those lands in the floodplain which have at least a one percent or greater chance of flooding in any given year, or are within areas that flood due to high groundwater. These areas can include: streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

"Functions and values". See "Ecosystem Functions" and "Ecosystem Values" ~~or "functional values" means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, recreation, educational opportunities, aesthetics, and slope and soil stabilization.~~

"Geologically hazardous areas" means areas susceptible to erosion, landslide, seismically induced soil failure, or other geological events as defined in Chapter 36.70A RCW and this chapter that are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

"Geologist" means a person who is licensed in the state of Washington under the provisions of Chapter 18.220 RCW and Chapter 308-15 WAC, and who has at least one year of practical experience in the Pacific Northwest.

"Habitat assessment" means a written report based on a site investigation process to evaluate the potential presence or absence of a regulated fish or wildlife species or habitat potentially affected by a development proposal, and containing an assessment of the potential impacts of the proposal on any regulated species or habitat subject to these regulations.

"Habitat management plan" means an activity proposed by a public agency or private entity, and approved by the planning director, within an area which may impact a fish and wildlife habitat conservation area to preserve, protect or enhance the fish and wildlife habitat conservation area.

~~"Habitats of primary association" means a critical component(s) of the habitats of federally or state-listed endangered, threatened, candidate, sensitive, and priority wildlife or plant species which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of primary association include, but are not limited to, winter ranges, migration ranges, breeding sites, nesting sites, regular large concentrations, communal roosts, roosting sites, staging areas, and "priority habitats" listed by the Washington State Department of Fish and Wildlife.~~

"Habitats and species of local importance" means those significant biological areas identified by the City; and priority habitats and species identified by the Washington State Department of Fish and Wildlife; and high quality ecological communities and systems and rare plants listed by the Washington State Department of Natural Resources.

~~"Habitats, priority" include:~~

~~1. Wetlands;~~

~~2. Riparian zones;~~

~~3. Marine/estuarine shorelines;~~

~~4. Urban natural open space. This includes areas that are not critical areas, but may include parks and other deeded open space areas that are actively managed to protect native plants and animals.~~

"Hazard tree" means any tree that poses a threat to public safety, or poses an imminent risk of damage to private property. "Hazard tree" includes any tree that, under normal environmental conditions or in windstorms common to the Pacific Northwest, is likely to cause damage to a structure with frequent human use, including residential structures, a place of employment or public assembly, and other similar places, or damage to an approved public road or utility facility.

~~"Hillsides" means geological features on the landscape having slopes of fifteen percent or greater.~~

"Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

~~"In-lieu fee (ILF) mitigation" means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a program sponsor to satisfy compensatory mitigation requirements for unavoidable impacts to wetlands and other aquatic resources. Per federal rule, sponsorship of ILF programs is limited to governmental, tribal, or nonprofit natural resource management entities. Similar to a wetland mitigation bank, an ILF program sells credits to permittees whose unavoidable impacts occur within a specified geographic area (service area). When credits are purchased from the ILF program, the permittee's obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The sponsor is then required to implement mitigation within a specified time frame, working with regulatory agencies to make sure impacts are fully mitigated. ILF programs are approved by the U.S. Army Corps of Engineers and the Washington State Department of Ecology.~~

"In-lieu fee (ILF) program" means an agreement between a regulatory agency (state, federal, or local) and a single sponsor, generally a public natural resource agency or non-profit organization. Under an in-lieu-fee agreement, the sponsor collects funds from individuals and/or entities required to conduct compensatory mitigation under a wetland regulatory program. The sponsor uses the funds pooled from multiple permittees to create one or more mitigation sites under the authority of the agreement to satisfy the permittees' required mitigation.

"Lake" means a natural or artificially created permanent body of water with an average depth of six feet or greater and an area larger than twenty acres, as measured at the ordinary high water mark.

~~"Land use impacts, high" means commercial, industrial, institutional, retail sales, high-intensity recreation (golf courses, ball fields), and residential uses with a density of more than one dwelling unit per acre and other similar uses.~~

~~"Land use impacts, low" means low-intensity open space (such as passive recreation and natural resources preservation) and unpaved trails and other similar uses.~~

~~"Land use impacts, moderate" means residential uses with a density of one unit per acre or less, moderate-intensity open space (parks), and paved trails and other similar uses.~~

"Landslide" means episodic downslope movement of a mass of soil or rock that includes but is not limited to rock falls, slumps, mudflows, earth flows, and avalanches.

"Landslide hazard areas" means those areas of the city subject to a risk of landslide based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors.

"Low impact development (LID)" means a ~~stormwater management strategy that emphasizes conservation and the use of existing natural site features integrated with distributed, small-scale stormwater controls to more closely mimic natural hydrologic patterns in developed settings.~~ stormwater and land-use management strategy that tries to mimic natural hydrologic conditions by emphasizing the following techniques: conservation, use of on-site natural features, site planning, and distributed stormwater best management practices (BMPs) integrated into a project design.

~~"Marsh" means an area permanently inundated by water less than six feet deep and occupied predominantly by an emergent wetland vegetation community.~~

"Mitigation sequence" means a prescribed order of steps taken to reduce the impacts of activities on wetlands, fish and wildlife habitat conservation areas, and buffers. As defined in WAC 197-11-768, mitigation means: ~~avoiding, minimizing, or compensating for adverse impacts and includes the use of any or all of the following actions:~~

~~1~~A. Avoiding the impact altogether by not taking a certain action or parts of an action;

~~2~~B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

~~3~~C. Rectifying the impact by repairing, rehabilitating or restoring the affected ~~critical area~~environment;

~~4~~D. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the ~~development proposal~~ action;

~~5~~E. Compensating for the impact by replacing ~~or,~~ enhancing, or providing substitute ~~critical areas~~ resources or environments; and/or;

~~6~~F. Monitoring the ~~required mitigation area~~ impact and taking remedial action when necessary.

"Monitoring" means the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural systems and features, and including gathering baseline data, evaluating the impacts of development proposals on the biological, hydrologic and geologic elements of such systems, and assessing the performance of required mitigation measures.

"Native vegetation" means vegetation on a site or plant species which are indigenous to the area in question; or if the site has been cleared, species of a size and type that were on the site on the effective date of this title or reasonably could have been expected to have been found on the site at the time it was cleared.

"Non-federally regulated wetland" means a wetland that is not jurisdictional under the federal Clean Water Act. Sometimes referred to as "isolated wetlands," these wetlands remain regulated under state and local laws and rules, whether or not they are protected by federal law.

"Normal rainfall" means that rainfall that is at or above the mean of the accumulated rainfall record, based upon the water year, for the city as recorded at the Seattle Tacoma International Airport, or other local rainfall recording station recognized by the city.

~~"Open water component" means water in dispersed patches covering forty to sixty percent of the wetland which have not less than six inches and not more than six feet of standing water for at least ten months of the year.~~

"Ordinary high water mark" means the mark that will be found by examining the channel bed and banks of a stream, lake or pond and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all years of normal rainfall, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation. In any area where the ordinary high water mark cannot be found, ~~the line of mean high water shall substitute~~ the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. In braided channels and alluvial fans, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

"Plant associations of infrequent occurrence" means one or more plant species on a landform type which, because of the rarity of the habitat or the species involved or both, or for other botanical or environmental reasons, do not occur frequently in Everett or Snohomish County.

"Pond" means an area permanently inundated by water in excess of six feet deep and less than twenty acres and larger than two thousand five hundred square feet in area as measured at the ordinary high water mark.

"Preservation" means the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes activities commonly associated with the protection and maintenance of wetlands through the implementation of appropriate legal and physical mechanisms (such as recording conservation easements and providing

structural protection like fences and signs). Preservation does not result in a gain of wetland area and functions (but may result in a gain in functions over the long term).

"Priority area" means known limiting habitats (e.g., breeding areas) or areas that support a relatively high number of individuals (e.g., regular concentrations) identified in WDFW's Priority Habitats and Species List.

"Priority habitats" mean, as defined by WDFW, habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type (e.g., shrub-steppe) or dominant plant species (e.g., juniper savannah), a described successional stage (e.g., old-growth forest), or a specific habitat feature (e.g., cliffs).

"Priority species" mean, as defined by WDFW, State Endangered, Threatened, Sensitive, and Candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable.

"Project area" means all areas proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

"Protected area" means ~~lands that lie within the boundaries of the floodway and riparian corridor.~~those lands that lie within the outermost boundary of the total area comprised by the floodway, the riparian habitat zone (as defined by FEMA's 2013 Model Ordinance for Puget Sound) and the channel migration zone.

"Qualified professional" means ~~a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director.~~ a person with experience and training in the applicable field who possesses a Bachelor of Science or Bachelor of Arts or equivalent degree in biology, engineering, fisheries, ecology, resource management, or related field, and who has at least two additional years of full-time, related work experience, A qualified professional for wetland delineations will also have completed additional wetland-specific training programs and/or have professional certificates or certifications. A qualified professional for geologic assessments or reports means an engineer or geologist licensed in the state of Washington, including: a licensed geologist, a licensed engineering geologist, or a licensed professional engineer with a certification in geotechnical engineering or at minimum of five years of experience evaluating geologically hazardous areas.

"Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland area and functions.

"Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland. Rehabilitation results in a gain in wetland function, but does not result in a gain in wetland acres.

"Reasonable use" or "reasonable economic use" means a legal concept that has been articulated by federal and state courts in regulatory takings cases.

"Repair or maintenance" means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

"Restoration" means ~~the return of a stream or wetland, or terrestrial ecosystem, to a state in which its functions and values significantly approach its unaltered state.~~ ~~M~~measures taken to restore an altered or damaged natural feature, including:

(a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

(b) Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

"Riparian corridor" means a perennial, intermittent, ephemeral stream or swale including its channel bottom, lower and upper banks, and area beyond the top of the upper bank which influences the stream through shading and organic matter input, and is influenced by the presence of water, particularly in regard to plant composition. The riparian corridor is the transitional area between aquatic and upland ecosystems and does not necessarily include the entire floodplain of a stream.

"Salmonid" means a member of the fish family Salmonidae. In the city these include Chinook, coho, chum, sockeye and pink salmon; cutthroat, brook, brown, rainbow and steelhead trout; and Dolly Varden, kokanee and char.

"Seismic hazard areas" means those areas of the city subject to severe risk of ~~earthquake damage as a result of seismically induced ground shaking, settlement, or soil liquefaction~~ damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, debris flows, lahars, or tsunamis. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. ~~These conditions occur in areas underlain by cohesionless soils of low density sometimes in association with a shallow ground water table.~~

"Service area" means The geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

"Significant biological areas" means the following areas of the city:

~~1~~ A. Plant associations of infrequent occurrence;

~~2. Commercial and recreational shellfish areas;~~

~~3. Kelp and eelgrass beds;~~

~~4. Herring, sand lance, and smelt spawning areas;~~

~~5. State natural area preserves and natural resource conservation areas; and~~

~~6~~B. Those areas listed in the 1981 SEPA Resource Inventory as significant biological areas, which are:

~~a~~ 1. Maulsby Swamp;

~~b~~ 2. Kasch Park (Bomarc) Bog;

~~c~~ 3. Simpson Lee site Category I wetlands;

~~d~~ 4. Narbeck Swamp;

~~e~~ 5. Jetty Island.

~~"Significant surface water connection" means a surface water flow that is continuous for thirty days or more during years of normal rainfall.~~

"Species, listed" means any species listed under the federal Endangered Species Act or state endangered, threatened, and sensitive, or priority lists (see WAC 220-610-110 or current "Priority Habitat and Species List," Washington Department of Fish and Wildlife).

"Steep slopes" means any ground that rises ten feet or more for every twenty-five feet of horizontal distance, thus having a grade of forty percent or steeper. A slope is delineated by establishing its toe and top:

1. "Toe" of a steep slope is the lowermost limit of the area where the ground surface rises ten feet or more vertically within a horizontal distance of twenty-five feet.

2. "Top" of a steep slope is a distinct, sharp break in slope which separates slopes inclined at less than forty percent from slopes equal to or greater than forty percent. Where no distinct break in slope exists, the top of the steep slope shall be the uppermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

"Stream" means those areas where naturally occurring surface waters flow sufficiently to produce a defined channel or bed which demonstrates evidence of the passage of water including, but not limited to, bedrock channels, gravel beds, sand and silt beds and defined-channel swales. A "defined channel or bed" means a watercourse that is scoured by water or contains deposits of mineral alluvium. The channel or bed need not contain water during the entire year. Streams do not include watercourses which were created entirely by artificial means, such as irrigation ditches, canals, roadside ditches or storm or surface water run-off features, unless the artificially created watercourse contains salmonids or conveys a stream that was naturally occurring prior to the construction of the artificially created watercourse.

"Stream channel bottom" means the submerged portion of the stream cross-section which is totally an aquatic environment. The channel bottom may be seasonally dry.

"Stream, Type F" means those streams defined in WAC 122-16-030, Water Typing System, as Type F water.

"Stream, Type Np" means those streams defined in WAC 122-16-030, Water Typing System, as Type Np water.

"Stream, Type Ns" means those streams defined in WAC 122-16-030, Water Typing System, as Type Ns water.

"Stream, Type S" means those streams defined in WAC 122-16-030, Water Typing System, as Type S water.

~~"Swamp" means an area permanently saturated or inundated by water, and occupied predominantly by either a scrub-shrub or forested wetland vegetation community.~~

"Temporal loss" means ~~the time lag between the loss of wetland functions caused by the permitted or unpermitted impacts and the replacement of wetland functions at the compensatory mitigation site~~ the time lag between the loss of aquatic resource functions caused by the permitted or unpermitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site, as defined in the 2008 Federal Mitigation Rule. Higher compensation ratios may be required to compensate for temporal loss. When the compensatory mitigation project is initiated prior to, or concurrent with, the permitted impacts, the permitting agencies may determine that compensation for temporal loss is not necessary, unless the resource has a long development time.

"Thermal refugia" means sites within a landscape that are relatively protected from temperature extremes and warming trends.

~~"Unavoidable and necessary impacts" means impacts to regulated critical areas after the applicant proposing to alter a regulated critical area has demonstrated that no reasonable alternative exists for the proposed project.~~

"Unavoidable impacts" mean adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

"~~Undevelopable area" means:~~

~~1. Regulated wetlands;~~

~~2. Geologically hazardous areas which are determined by supporting studies to be unsuitable for development;~~

~~3. Streams;~~

~~4. Habitats of primary association;~~

~~5. Plant associations of infrequent occurrence.~~

~~"Undisturbed, relatively" is defined in question H2.0 of the 2014 Washington State Wetland Rating System for Western Washington.~~

"Unstable soils" means soils which by their physical nature are not suitable to support buildings, roads, utilities or other manmade development related improvements, or which have the potential for slope failure, erosion, or subsidence. Unstable soils include, but are not limited to, those areas defined as landslide hazard areas, erosion hazard areas, and seismic hazard areas, or other soils which have been determined by the public works director or the building official to be unsuitable for building foundations or structural support.

~~"Upper bank" means that portion of the topographic cross-section of a stream which extends from the break in the general slope of the surrounding land to the ordinary high water mark.~~

"Watershed approach" means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of wetlands in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed and offset losses of wetland functions and services caused by authorized activities. The watershed approach may involve consideration of landscape scale, historic and potential wetland conditions, past and projected wetland impacts in the watershed, and terrestrial connections between wetlands when determining compensatory mitigation requirements.

~~"Wetland boundary" means, for the purposes of the calculation of the area of the wetland, the total extent of the wetland, both on site and off site.~~

~~"Wetland class" means a description of vegetation habitat based on the predominant life forms that occupy a particular layer of vegetation and possess an aerial coverage of thirty percent or greater of the entire wetland. The basis for these descriptive classes is derived from the Wetlands Taxonomic Classification System of the United States Fish and Wildlife Service (Cowardin et al., 1979).~~

~~"Wetland, contiguous" means wetland systems connected by hydric soils or a significant surface water connection. For purposes of this title, wetlands will not be considered contiguous if the only hydrologic connection is a Category I, II or III stream, or if the wetlands had historically been connected but are now separated by a legal fill or culvert which is one hundred feet or more in length.~~

~~"Wetland edge" means the line delineating the outer edge of a wetland established by using the Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94, 1997).~~

"Wetland delineation" means the method used to establish the existence (location) and physical limits (size) of a wetland for purposes of federal, state, and local regulations.

"Wetland, estuarine" ~~means a tidal fringe wetland found along the mouth of a river and influenced by tidal activity. Water flows and depths are controlled by tidal cycles in the adjacent ocean. Estuarine wetlands have a salinity higher than 0.5 parts per thousand.~~ *See Wetlands with special characteristics*

"Wetland mitigation bank" or "mitigation bank" means ~~a site where wetlands are restored, created, enhanced, or, in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. Banks typically involve the consolidation of many small wetland mitigation projects into a larger, potentially more ecologically valuable site. Such consolidation encourages greater diversity of habitat and wetland functions. It also helps create more sustainable systems. Banks provide a greater likelihood of success over permittee-responsible mitigation projects, since the banks are up and running before unavoidable damage occurs to a wetland(s) at another site~~ a site or suite of sites where resources are restored, created, enhanced, and/or preserved, for the purpose of providing compensatory mitigation for impacts. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

"Wetland mosaic" means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; patches are less than 100 feet from each other; and areas delineated as wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water.

~~"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Regulated wetlands generally include swamps, marshes, ponds, bogs and similar areas. Regulated wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands. For identifying and delineating regulated wetlands, the city shall use the Washington State Wetland Identification and Delineation Manual.~~

~~"Wetlands," for the purpose of inventory mapping, means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands must have one or more of the following three attributes:~~

~~1. At least periodically, the soil supports predominantly hydrophytes;~~

~~2. The substrate is predominantly undrained hydric soil;~~

~~3. The substrate is nonsoil and saturated with water at some time during the growing season of each year.~~

~~Wetlands include all areas waterward from the wetland edge. Where the vegetation has been removed, or substantially altered, a wetland shall be determined by the presence or evidence of hydric or organic soils.~~

"Wetland" or "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

~~"Wetlands, emergent" means a regulated wetland that does not qualify as a forested wetland or a scrub-shrub wetland with at least thirty percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.~~

"Wetlands, forested" ~~means a regulated wetland with at least thirty percent of the surface area covered by woody vegetation greater than twenty feet in height.~~ See *Wetlands with special characteristics.*

~~"Wetlands, isolated" means those wetlands which:~~

~~1. Are outside of and not contiguous to any one-hundred-year floodplain or riparian corridor of a lake, river, or stream; and~~

~~2. Have no contiguous hydric soil or surface water connection between the wetland and another surface water body.~~

"Wetlands, riparian" means those wetlands that generally occur within a riparian corridor that is contiguous to or has a surface hydrologic connection with a stream. Wetlands formed by hillside seeps that are not hydrologically affected by water in a nearby stream are not riparian wetlands. However, wetlands on a hillside may be riparian wetlands if adjacent to a stream that flows down the hillside.

"Wetlands with special characteristics" mean bogs, estuarine wetlands, forested wetlands, interdunal wetlands, wetlands in coastal lagoons, and Wetlands of High Conservation Value. Detailed information about these individual wetland types is found in the Washington State Wetland Rating System for Western Washington: 2014 Update, Version 2.0 (Ecology Publication #23-06-009), or as revised.

~~"Wetlands, scrub-shrub" means a regulated wetland that does not qualify as a forested wetland with at least thirty percent of its surface area covered by woody vegetation less than twenty feet in height as the uppermost strata.~~

Section 2. Chapter 19.37 EMC, set forth in exhibit A attached hereto, is hereby repealed.

Section 3. Title 19 EMC is amended by the addition of the chapter 19.37 EMC as set forth in exhibit B, attached hereto:

Section 4. The city clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references and ordinance numbering.

Section 5. The city council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the city council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. This ordinance shall take effect June 1, 2026.

Cassie Franklin, Mayor

ATTEST:

Marista Jorve, City Clerk

PASSED: 04/15/2026
VALID: 05/11/2026
PUBLISHED: 04/18/2026
EFFECTIVE DATE: 06/01/2026

EXHIBIT A

CHAPTER 19.37 CRITICAL AREAS

19.37.010 USER GUIDE.

Many areas of Everett have been or may become designated, identified, inventoried, classified or rated as critical areas by the city or other public agencies. This chapter establishes regulations for development within or near all critical areas. If you are interested in developing property identified as containing or adjacent to steep slopes, lakes, streams, marine waters, wetlands, springs, erosion hazard areas, landslide hazard areas, seismic hazard areas, or other unstable soil conditions, you should read this chapter. This chapter contains more stringent requirements than other provisions within this title for affected properties. These regulations supersede any less restrictive requirements contained elsewhere in this title. No action may be undertaken by any person which results in any alteration of a critical area or its buffer unless such alteration complies with the requirements of this chapter. Alteration includes the terms “use” and “development” as defined in this title, and includes any modification of the natural environment of critical areas or their buffer including any clearing, grading, filling and/or excavation. Certain exceptions to the requirements of this chapter are listed in EMC 19.37.050.

19.37.020 PURPOSE.

Erosion, flood, landslide, and seismic hazard areas, streams, wetlands, protective buffers, and wildlife habitat areas constitute critical areas that are of special concern to the city. The purpose of this chapter is to designate, classify and protect the critical areas of the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

A. Preserving, protecting, and restoring critical areas by regulating development within such areas and their buffers;

B. Mitigating unavoidable adverse impacts by regulating alterations when protection cannot be required;

C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;

D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:

1. Unnecessary maintenance and replacement of public facilities,

2. Publicly funded mitigation of avoidable impacts,

3. Public costs for emergency rescue and relief operations where the causes are avoidable, or

4. Degradation of the natural environment;

E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;

F. Alerting appraisers, assessors, owners, potential buyers or lessees to the presence of critical areas and the respective development limitations of such areas;

G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals;

H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 19.43 EMC, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city; and

I. Providing for the maintenance and enhancement of views, solar access, and/or elimination of future potential hazards or nuisances while protecting critical area functions and values.

19.37.030 APPLICABILITY.

A. This chapter establishes regulations for the protection of critical areas and applies to all lands, all land uses and development activity, and all structures or facilities, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, government agency, or other entity that owns, leases or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter. For development proposals on properties within shoreline jurisdiction, the shoreline master program applies in addition to the regulations contained in this chapter. No alteration of a critical area may occur until the city has issued all approvals required by this chapter. By way of example and not limitation, no development permit may be issued; no subdivision of land may be approved; no clearing, filling, or grading may occur; nor may any use be established, altered, or expanded on any lot until approvals required by this chapter have been granted by the city.

B. In addition to the requirements of this chapter, the applicant shall obtain all necessary state, federal and other local permits.

19.37.040 CRITICAL AREA FEATURES.

On all lots containing or within three hundred feet of critical areas, the following features and their buffers shall not be altered or developed except as otherwise permitted by this chapter:

A. Areas of special flood hazard (if located in a designated floodplain, also see Chapter 19.30 EMC);

B. Wetlands;

C. The following geologically hazardous areas:

1. Erosion hazard areas;

2. Landslide hazard areas;

3. Seismic (liquefaction) hazard areas;

D. Fish and wildlife habitat conservation areas, including streams/riparian areas, lakes, marine waters, habitats of primary association, continuous vegetative corridors linking watersheds, and significant biological areas as defined in this title;

E. Ground water discharge areas, such as springs and seeps.

19.37.050 EXEMPTIONS—EXCEPTIONS—MODIFICATIONS.

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the administrative modifications which can be granted to the requirements of this chapter.

All activities or developments which are exempted, excepted, or granted modifications shall use reasonable methods to avoid and minimize potential impacts to critical areas, including use of any applicable best management practices. Such activities or developments which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable.

A. *Exemptions.* The following are exemptions to the provisions of this chapter; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the expense of the property owner.

1. *Exempted Actions.*

a. Emergencies that threaten the public health, safety and welfare, as verified by the city. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area and/or its buffer.

b. Existing and ongoing agricultural activity occurring prior to and since January 3, 1990; provided, however, at such time as the property ceases to be used for agricultural activities and a development activity is proposed, the property shall be brought into compliance with the provisions of this chapter; and further provided, that existing ditches and drain tiles are not expanded in a manner that will drain wetlands in existence as of the date this chapter becomes effective. This exemption does not apply to filling or alteration of wetlands not in agricultural use as of January 3, 1990. The city encourages the use of best management practices or farm conservation plans to reduce impacts of agricultural practices on critical areas.

c. Normal and routine maintenance of legally constructed irrigation and drainage ditches; provided, that this exemption shall not apply to any ditches used by salmonids.

d. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds; provided, that such activities shall not involve the conversion of any wetland or stream not used for such purposes prior to and since January 3, 1990.

e. Entirely artificial structures or wetlands intentionally constructed by humans from upland areas for purposes of stormwater drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter.

f. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility-related activities, and maintenance of public streets and public park facilities when the activity does not expand or encroach further into the critical area, does not significantly impact a fish or wildlife habitat conservation area, and when undertaken pursuant to best management practices to minimize impacts to critical areas and their buffers:

(1) Normal, routine, and emergency maintenance or repair of existing utility structures or rights-of-way, including vegetation management;

(2) Installation, construction, or modification in improved street rights-of-way and replacement, operation or alteration of the following facilities:

(A) Natural gas, cable communications, telephone facilities, water and sewer lines, pipes, mains, equipment or appurtenances;

(B) Electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less;

(3) Normal and routine maintenance or repair of public streets, state highways, and public park facilities, including vegetation management. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area, nor does it include construction of a maintenance road or the dumping of maintenance debris.

g. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the State Department of Natural Resources.

h. Minimal soil disturbance for site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. Disturbed areas shall be immediately restored.

i. Conservation measures intended to preserve soil, water, vegetation, fish and other wildlife and their associated habitat that do not involve adversely impacting functions of the critical area.

j. Routine maintenance of existing landscaping and fencing including removal of invasive vegetation, that does not involve grading, excavation or filling.

k. Modification to existing structures. Legally constructed structures and improvements in existence on January 13, 1990, that do not meet the buffer requirements of this chapter may be remodeled, reconstructed, expanded or replaced; provided, that the

new construction or related activity does not further alter or increase the impact to the critical area or buffer as a result of the proposed modification. For structures that are damaged or destroyed as a result of flood, fire or act of nature, restoration work shall be initiated by the applicant within one year of the date of damage or destruction, as evidenced by issuance of a valid building permit. The work authorized by such permit must be completed within the term of the permits issued by the city, which includes any written extensions. Expansions and additions shall not further encroach into a critical area or the portion of the required buffer between the critical area and existing improvements. Expansions within the critical area or buffer shall be limited to a maximum of one thousand square feet of impervious surface. To the extent feasible based on site-specific conditions, expansions shall result in no additional hydrologic impacts from stormwater runoff by using techniques such as low impact development. Remodeling, reconstruction, and expansions shall be subject to all other requirements of the zoning code.

B. *Exceptions.* All exceptions must be approved by the city through the review process listed in EMC Title 15 prior to the exception applying. The following are exceptions to the requirements of this chapter; however, the exceptions listed in this section still require compliance with the other requirements of this chapter, except as allowed by the exception. The exception may not be exempted from other state or federal regulations or permit requirements. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the allowed development shall be restored, rehabilitated, or replaced at the expense of the property owner.

1. New accessory structures up to one hundred square feet, including storage buildings and garden sheds. Where structures, lawns and associated improvements have been legally established within a buffer area, new structures may be placed within the outer fifty percent of a legally altered critical area buffer. The one-hundred-square-foot limit shall include all associated improvements such as walkways or other impervious areas. Only one such exception per site or property is allowed.

2. New accessory structures between one hundred one square feet and two hundred square feet. Where structures, lawns and associated improvements have been legally established within a buffer area, new structures and additions to existing structures up to two hundred square feet may be permitted within the improved portion of the buffer as follows:

a. The two-hundred-square-foot limit shall include all associated improvements such as walkways or other impervious areas;

b. The new structure or addition shall be placed within the outer fifty percent of a legally altered critical area;

c. The new structure or addition maintains a minimum setback of ten feet from the critical area;

d. A minimum of one square foot of legally altered buffer area is restored for every one square foot of new structure;

e. A critical area covenant is recorded;

f. A habitat assessment is completed if within an F stream buffer;

g. A fence and critical area sign are provided to protect the newly established buffer area; and

h. Only one exception per site or property is allowed.

3. *Wetland Exception.* The following wetlands may be excepted from compliance with the wetland preservation and protection goals in this chapter. Mitigation must be provided for any approved impacts per EMC 19.37.120.

a. All isolated category IV wetlands less than four thousand square feet that meet all of the following criteria:

(1) Are not associated with riparian areas or their buffers;

(2) Are not associated with shorelines of the state or their associated buffers;

(3) Are not part of a wetland mosaic;

(4) Do not score five or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology);

(5) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat.

b. Wetlands less than one thousand square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter.

4. The following actions may be required to provide a habitat assessment or biological assessment under EMC 19.37.190, Fish and wildlife habitat conservation areas. If the application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements, a development proposal by a public agency or a utility to construct utility facilities for the conveyance of water, sewage, storm drainage, electricity, natural gas, cable or telecommunications, or the construction of streets and highways, the agency or utility may request an exception. Such a request shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures. The city may approve, or approve with modifications, such a request only when the following findings are made:

a. The application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements or maintenance;

b. There is no other reasonable alternative to the proposed development with less impact on the critical area;

c. The proposal mitigates impacts on the critical areas;

d. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and

e. The proposal is consistent with other applicable regulations and standards.

5. *Docks.* This section does not apply to areas under jurisdiction of the shoreline master program.

a. Repair and maintenance of an existing legally established dock are permitted; provided, that all of the following criteria are met:

(1) There is no expansion in overwater coverage;

(2) There is no increase in the size and number of pilings;

(3) There is no use of toxic materials, such as creosote, CCA and other treated wood products;

(4) There is no new spanning of water between three and thirteen feet deep; and

(5) There is no new increase in the use of materials creating shade.

b. New docks are permitted subject to compliance with any WDFW HPA or U.S. Army Corps of Engineers permit conditions. Piers and docks shall be located, designed and constructed so as to cause minimum interference with public use of the water surface and shoreline; to mitigate the impacts to ecological function and critical areas; to avoid or minimize impacts to views; and to cause no undue harm to adjacent properties.

c. New docks shall be a maximum of four feet in width and a maximum walkway width of four feet. Overwater surfaces shall be constructed of unobstructed grating which provides at least fifty percent of open surface area. Piles, floats or other parts of the structure that come in direct contact with the water shall be approved by applicable federal and state agencies for use in water and shall not be treated or coated with biocides such as paint or pentachlorophenol. Use of arsenate compounds or creosote treated members is prohibited.

d. Only one dock shall be permitted for all lots in any short subdivision or subdivision that occurs after September 1, 2000. Such dock shall be shared between all lots in the short subdivision or subdivision.

e. Covered overwater moorage, either fixed or floating, shall be prohibited.

f. No dock may be located within fifteen feet of an interior lot line, unless shared with the owner of the adjacent lot, in which case no setback is required.

g. No single-family lot shall have more than one dock.

h. No dock shall exceed four feet in width, twenty-five feet in length or five feet in height above the ordinary high water mark on the landward side.

6. *Reasonable Use Exception.* This section does not apply to areas within jurisdiction of the shoreline master program.

a. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

(1) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area; and

(2) The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

(3) Any alterations permitted subject to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

(4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of the ordinance codified in this chapter; and

(5) The proposal mitigates the impacts on the critical areas and buffers to the maximum extent possible.

b. *Reasonable Use Decision Process.* Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the submittal shall include the following information which will be used to evaluate the criteria for reasonable use exception:

(1) The location, size, and description of the areas of the lot which are either critical areas, required buffers, or setbacks required by this chapter;

(2) A description of the location and area of the lot which is within setbacks required by other standards of the zoning code;

(3) An analysis of the minimum development necessary to achieve “reasonable economic use” of the lot, including a narrative which includes a factual basis for this determination;

(4) An analysis of the impact that the development described in this section would have on the critical areas and buffer functions, including an analysis of impacts on fish and wildlife resources;

(5) An analysis of whether any other reasonable use with less impact on the critical areas and buffers is possible. This must also include an analysis of

whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical areas and buffers. The phasing analysis shall address whether pre-project mitigation of impacts to buffers is feasible to reduce impacts on critical areas. The analysis shall also address stormwater impacts and mitigation required by the city's stormwater management regulations;

(6) A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the critical areas;

(7) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

(8) A description of any modifications needed for the required front, side and rear setbacks, building height, and landscape widths to provide for a reasonable use while providing protection to the critical areas;

(9) A description of the proposed enhancement/restoration of the critical area and buffer necessary to result in no net loss of function to the maximum extent feasible;

(10) Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

c. *Reasonable Use Administrative Modification.* If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

(1) If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while providing greater protection to the critical areas than if the standard were met;

(2) If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the critical areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot. Where buffer reduction is permitted, enhancement/restoration of the buffer and/or critical area must be provided so that mitigation results in no net loss of critical area and buffer functions to the maximum extent feasible; or

(3) If a reasonable economic use of a lot cannot exist by means of either subsection (B)(6)(c)(1) or (2) of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection (B)(6)(c)(1) or (2) of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

(A) *Single-Family Zones.* The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to a single-family zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

(i) The number of dwelling units which the planning director determines to be the minimum necessary to allow for reasonable economic use of the restricted property; or

(ii) The number of dwelling units that would be allowed on the receiving site with an assumed twenty percent increase in lot size. In approving a transfer of development rights to the receiving site in a single-family zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All dwelling units on such lots shall be single-family dwellings.

(B) *Multiple-Family Zones.* The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

(C) *Commercial and Industrial Zones.* The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

d. All other requirements of this chapter shall apply to the subject property, including but not limited to submittal of mitigation plans, monitoring reports, and assurance devices, installation of fencing and signs, and recording of protective covenants.

19.37.060 PERMITTED USES AND ACTIVITIES.

A. Uses permitted on lots containing or adjoining critical areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this chapter and other city, state, and federal regulations.

B. The following uses/activities are permitted in critical areas and their buffers:

1. Minor utility construction projects. Utility projects which have minor or short-duration impacts to critical areas, provided such projects are constructed using best management practices to avoid and minimize impacts to critical areas and required buffers, subject to the following criteria:

a. The activity does not significantly impact a Type F stream, a category I wetland, or a fish and wildlife habitat conservation area and complies with other provisions of this chapter; and

b. There is no reasonable alternative to the proposed activity with less impact on the critical area; and

c. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility; and

d. The activity results in disturbing less than one hundred square feet of critical area and buffer.

2. Buffer management, as defined in this title, when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted:

a. *Pruning.* Pruning is limited to trimming, limbing, thinning, windowing, and skirting in a manner consistent with this subsection.

(1) A permit is required to prune trees in critical areas. Prior to pruning, trimming, limbing, thinning, windowing, and/or skirting:

(A) The applicant shall submit a pruning report by a certified arborist and have all work be performed under the direction of a certified arborist.

(B) The applicant, in lieu of the above and an application fee as determined by the planning director, shall:

(i) Submit a plan showing the location of the proposed work, using aerial photos or a site plan that accurately depicts the location of trees to be pruned;

(ii) Submit photos of the trees to be pruned, a description of the portions of the tree to be removed by pruning, and documentation that the trees are located on property owned by the applicant;

(iii) Sign a declaration stating that they have read and understand, and will comply with, the applicable city regulations;

(iv) Submit photos of the trees that were pruned after the work is completed.

(C) The city shall review and issue the tree pruning permit upon submittal of a complete application that demonstrates the proposal complies with all applicable requirements.

(D) The city shall conduct a site inspection upon completion of the work or any time thereafter if the work was done without a certified arborist to determine that the work has been conducted in accordance with city regulations.

(2) Pruning must adhere to the standards in ANSI A300, 2008 Edition, or as subsequently amended.

(3) Pruning shall not result in the removal of more than thirty-three percent of the tree's crown.

(4) Pruning shall not include topping of trees unless underneath power lines.

(5) Pruning activity shall not result in any soils disturbance on the site.

(6) A tree that is an active nest site for a species of local or state importance or provides critical habitat such as an eagle perch, or other listed threatened or endangered species, shall not be pruned.

(7) Topping trees or pruning trees in excess of thirty-three percent is considered a nonhazardous tree removal activity and therefore must comply with subsection B.3.c of this section.

(8) Once a tree is permitted to be pruned, it may be continued to be pruned but may not be pruned beyond thirty-three percent of the tree's original crown.

b. *Hazard tree removal with replanting.* The removal of hazard trees from critical areas and required buffers subject to the replanting of native trees to maintain critical area

and buffer functions. Hazard trees are those trees that pose a threat to public safety, or pose an imminent risk of damage to private property.

(1) The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, an assessment and recommendation from a certified arborist, registered landscape architect or professional forester that documents the hazard and provides a replanting schedule for replacement trees.

(2) Where hazards can be eliminated without complete removal of the tree, the director may require that a wildlife snag remain in the critical area or required buffer.

(3) Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two trees for every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan.

(4) If a tree to be removed provides critical habitat, such as an eagle perch, a qualified biologist shall be consulted to determine timing and methods of removal that will minimize impacts. The biologist's report shall be circulated to agencies with expertise for review and comment prior to approval by the director.

(5) If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property.

(6) Unless otherwise provided, or as a necessary part of an approved alteration, mitigation, or buffer management plan, removal of any vegetation or woody debris from a wildlife habitat conservation area or wetland, or required stream or wetland buffer, shall be prohibited.

(7) The city may require that a hazard tree assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of this chapter prior to final approvals for a development proposal.

c. *Nonhazardous tree removal with replanting.* Except as allowed under subsection B.2 of this section, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow up to a maximum of ten percent of all nonhazardous trees within the outer half of a critical area buffer to be removed. Removal of nonhazardous trees must comply with the following requirements:

(1) Proposals to remove nonhazardous trees shall include a planting plan prepared by a qualified professional biologist, arborist, or forester unless waived by the planning director. The plan must show the number, size, and type of plants to be planted and where the plants will be located. The plants should be placed in an area within the buffer that will be most beneficial to the stream or

wetland and an area where future cutting will not be necessary. A minimum of three, three- to five-gallon native trees of different varieties must be planted for every tree to be removed unless it would create an overcrowded situation in which case the planning director can reduce this ratio or allow shrubs to be planted as an alternative. On geologically hazardous slopes, the tree size shall be a minimum of two gallons or if bareroot an equivalent size. The planning director shall have discretion to reduce the number of trees to be cut if the proposed plan fails to replace over the long term the loss of functions and values of the buffer that may result from the cutting of trees. A tree inventory is required with the tree type and size shown on a site plan unless waived by the planning director. Only trees greater than a six-inch caliper within the outer half of the critical area buffer can be counted unless the trees to be removed are less than six-inch caliper.

(2) Tree removal is limited to once every five years.

(3) A tree that is an active nest site for a species of local importance or provides critical habitat such as an eagle perch shall not be cut.

(4) If the buffer's edge has not been delineated and cannot be determined by the city, a wetland or stream buffer delineation will be required.

(5) If the trees to be removed are on a geologically hazardous slope, a geological assessment letter or geotechnical report is required unless waived by the planning director. A geologically hazardous covenant must be recorded prior to tree cutting.

(6) Tree stumps must not be removed and all wood debris must be left within the buffer unless otherwise recommended by a biologist or geologist. A minimum of twenty-five percent of cut trees shall be left as snags approximately twenty feet tall unless within striking distance of structures, yards, or trails.

(7) Where the stump of a big-leaf maple or other tree with a similar growth habit that has been approved for removal remains in the buffer, branches that sprout from the stump may be removed annually.

(8) Prior to cutting, all trees to be cut must be marked, all required replacement plants must be on the property ready to be planted, and a critical areas covenant must be recorded. The replacement plants must be planted prior or immediately after the trees have been cut and placed in an area within the buffer that will be most beneficial to the stream or wetland.

(9) A survey may be required if trees are to be removed near any lot line.

(10) *Forest Practices.* Where applicable, applications for tree removal shall also include a city of Everett timber harvest application and include an estimate of the number of board feet to be cut.

(11) Planting of additional trees beyond what is required in this section or buffer enhancement may be required if trees have been cut without planning director approval.

d. *Weed Removal.* The removal of the following invasive, nonnative and noxious weeds in conjunction with a mitigation plan or buffer management plan approved by the director, including revegetation with native plants. The director may require that only hand tools or light equipment be used for removal.

(1) Invasive and noxious weeds identified in a list adopted by the city or county;

(2) English ivy (Hedera helix);

(3) Himalayan blackberry (Rubus armeniacus) and evergreen blackberry (Rubus laciniatus);

(4) Scotch broom (Cytisus scoparius).

4. *Public and private pedestrian paths and trails.* Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and subject to approval by the director:

a. The trail or path is designed to minimize impacts to the critical area and its buffer. The trail is located on the outer twenty-five percent of the buffer, except for areas which provide for public viewpoints of the critical area or educational opportunities and which are designed to minimize the footprint of the trail/path within the critical area or its buffer. Trails and paths shall not be permitted when critical area functions will be substantially degraded. The width of trails shall be the minimum necessary, and should not exceed five feet, unless trails are provided for shoreline public access, in which case maximum trail width shall be eight feet. The trails should be one hundred percent porous to the maximum extent feasible. The proposal must comply with EMC 19.37.190.

b. The trail surface meets all other requirements including all applicable water quality standards. Use of pervious surfaces is encouraged.

c. Critical area and buffer widths shall be increased where possible, equal to the width of the trail corridor, including disturbed areas.

d. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

e. Public and quasi-public trails shall include interpretive signs identifying the critical area and buffer specific to the site.

5. Stormwater facilities are allowed in stream and wetland buffers subject to all of the following criteria:

a. Stormwater management facilities are permitted only within the outer twenty-five percent of the buffer.

b. The subject buffer area has been previously substantially and legally altered and is unvegetated, sparsely vegetated, and/or vegetated with nonnative or invasive species.

c. Stormwater facilities shall be integrated into the stream or wetland buffer as a natural drainage system. The slopes and all areas that are disturbed shall be planted with native vegetation consistent with a buffer enhancement/mitigation plan. Aboveground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the natural design of the proposed facility and does not interfere with wildlife passage or adversely impact biological functions of the buffer or the adjacent critical area.

d. The location of a maintenance/access road is limited to the upland side of the facility outside the buffer.

e. The facilities must include a buffer enhancement and management plan that would improve the functional performance of the buffer and associated critical area.

f. All site development plans must incorporate low impact stormwater management techniques where site conditions allow as required by the city's stormwater management regulations.

g. For Type Np and Ns streams and category II, III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. A significant increase in wetland function shall be defined as no reduction in any individual function as measured by the Western Washington Wetland Rating System, and at least a five-point overall increase in the combined function score as measured by the Western Washington Wetland Rating System.

19.37.070 CRITICAL AREA REPORTS—GENERAL.

A. *Supporting Information.* All land uses and developments proposed on or adjacent to critical areas and their buffers shall include studies which describe the environmental conditions of the site. No activity, including clearing, filling or grading, shall be permitted until the information required by this section is reviewed and approved by the city. Such studies shall be prepared by experts with demonstrated qualifications in the area of concern, who shall prepare the studies in accordance with the requirements of this chapter to the satisfaction of the planning department. The city may retain consultants at the applicant's expense to assist the review of studies and/or conduct site evaluations which are outside the range of staff expertise. The planning director is authorized to develop and maintain a detailed list of required study contents.

B. *When a Critical Area Report Is Required.* A critical area report is required when a proposed development is located on a site with a documented or suspected critical area, or within three hundred feet of a documented critical area on an adjacent parcel (or two hundred feet from an active

geologically hazardous area). The city may waive the requirement for a critical area report in the following circumstances on a case-by-case basis:

1. The critical area was previously documented by a study and the city has determined the proposed development would meet the minimum required buffer for the critical area and the project would not impact the critical area; or

2. There is existing legally established development located between the critical area and the proposed development site and any required buffers on the site would be ineffective.

Table 37.1: Critical Area Reports—Summary

Document/Report Type	**When Required**	**Notes:**
Geological Assessment Letter	Potential geologically hazardous area exists on or within 200 feet of the proposed project area	Reconnaissance study
Geological Report	An active geologically hazardous area exists on or within 200 feet of the proposed project area	Detailed study
Critical Area Delineation Report	Wetland, stream or lake on site or within 300 feet	Identifies and maps critical areas and buffers
Wetland or Stream Mitigation Plan	Alteration or fill of wetlands, streams or buffers	Includes monitoring and contingency elements
Biological Assessment for Threatened Species	Development within 200 feet of Type F stream	For federally listed threatened or endangered species
Biological Assessment for Threatened Species	Development within “protected area” or “special flood hazard area”	Per biological opinion by NMFS for development within 100-year floodplain. See EMC 19.37.190.
Biological Evaluation	Typically not required by the city, but may be required by state or federal agencies	Generic term for other types of analysis

Document/Report Type	When Required	Notes:
Habitat Assessment	Potential impacts on regulated threatened/endangered species	Can apply to either terrestrial or aquatic habitat. See EMC 19.37.190.
Habitat Management Plan	Provided with a habitat assessment when a development is proposed on or adjacent to a "habitat of primary association" for fish and wildlife habitat conservation area	See EMC 19.37.190
Monitoring Report	After completion of enhancement or mitigation work within critical areas and/or buffers	Provided post-development

19.37.073 CRITICAL AREA REPORTS—PROFESSIONAL QUALIFICATIONS AND REPORT CONTENT.

A. *General Requirements for All Critical Area Reports.*

1. *Preparation by a Qualified Professional.* A critical area report shall be prepared by a qualified professional who is a certified professional scientist, a noncertified professional scientist with a minimum of five years of experience, or a professional who demonstrates sufficient expertise to the satisfaction of the planning director. The qualifications of the professional who prepared the plan shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. When a geological assessment is required, the report shall be prepared by a licensed geologist or geotechnical engineer. The director shall have the authority to hire an outside consultant at the applicant's expense to review plans when the city has concerns about the accuracy or completeness of the plan.

2. *Report Content.* The written report (and the accompanying plan sheets) shall contain all of the following information, at a minimum:

a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; and a description of the proposal;

b. Tax parcel numbers of the subject property;

c. Documentation of any fieldwork performed on the site, including delineations, function assessments, baseline hydrologic data, date and time of site evaluation, etc.;

d. Identification and characterization of all critical areas and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within three hundred feet of the project boundaries using the best available information;

e. The wetland or stream rating as defined in this chapter, as applicable;

f. A description of the proposed actions including an estimation of acreages of impacts to critical areas and buffers based on the field delineation;

g. An assessment of the probable cumulative impacts to the critical areas and buffers resulting from the proposed development;

h. A description of reasonable efforts made to apply mitigation sequencing provisions per EMC 19.37.085 to avoid, minimize, and mitigate impacts to critical areas pursuant to the mitigation sequencing provisions of this chapter;

i. A description of measures taken to protect and enhance existing habitat connections with other natural areas;

j. Site maps and site plans depicting delineated critical areas and buffers, impacts of the proposal on critical areas and buffers, grading and clearing limits, and other project and site-specific information as determined necessary by the director;

k. Dimensions of all buffers and distances between critical areas and existing and proposed structures and lot lines.

B. *Minimum Standards for Geological Assessments.* A geological assessment is a site investigation process to evaluate the on-site geology affecting a subject property and contiguous properties and the extent to which geological factors may be impacted by the proposed development activity.

1. A field investigation and geological assessment shall be completed to evaluate whether or not an active geological hazard area exists within two hundred feet of the site.

a. The geological assessment shall be submitted in the form of a geotechnical letter when the geologist or geotechnical engineer finds that no active geological hazard area exists on or within two hundred feet of the site. The geotechnical letter shall meet the minimum required content listed in this section and shall be in the format established by the director.

b. The geological assessment shall be submitted in the form of a geotechnical report when the geologist or geotechnical engineer finds that an active geologically hazardous area exists on or within two hundred feet of the proposed project area. The geotechnical report shall meet the minimum requirements established by the director pursuant to this section.

2. A geological assessment shall include a field investigation and may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.

3. A geological assessment shall include the following minimum information and analysis:

a. An evaluation of any areas on the site or within two hundred feet of the site that are geologically hazardous as set forth in EMC 19.37.080(A), Designation.

b. An analysis of the potential impacts of the proposed development activity on any geologically hazardous area. The analysis shall include information regarding any potential geological hazard that could result from the proposed development either on site or off site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope, whether the slope is part of the subject property or starts off site.

c. Identification of any mitigation measures required to eliminate potentially significant geological hazards both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis. The mitigation plan shall include recommendations regarding any long-term maintenance activities that may be required to mitigate potential hazards.

d. The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments or geotechnical investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.

e. The geological assessment shall contain a summary of any other information the geologist identifies as relevant to the assessment and mitigation of geological hazards.

C. *Additional Critical Area Report Content for Wetlands.* A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, including experience preparing wetland and stream reports, or a professional who demonstrates expertise in wetland science, stream ecology, or fish and wildlife biology to the satisfaction of the planning director.

1. Wetland shall be rated according to the categories defined by the Washington State Department of Ecology Washington State Rating System for Western Washington 2014 Update, or as revised (Ecology Publication No. 14-06-029).

2. Hydrogeomorphic classification; wetland acreage, and Cowardin classification of vegetation communities; and, to the extent possible, hydrologic information such as location and condition of inlet/outlets. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

D. *Additional Critical Area Report Content for Biological Assessments (BA).* Refer to requirements for habitat assessment in subsection E of this section.

E. *Additional Critical Area Report Content for Habitat Assessment and Habitat Management Plans (HMP).*

1. *Habitat Assessment.* All habitat assessments required by this chapter shall include the following elements in addition to the general requirements for all critical area reports listed in this section:

a. A detailed description of the vegetation on and adjacent to the site.

b. Identification and a detailed description of any critical fish or wildlife species or habitats, including listed threatened or endangered species, as set forth in this chapter, on or adjacent to the site and the distance of such habitats or species in relation to the site. Describe efforts to determine the status of any critical species in the project area, including information on survey methods, timing, and results of surveys for species or suitable habitat identification.

c. Include any information received from biologists with special expertise on the species or habitat type, such as WDFW, Tribal, USFS, or other local, regional, federal, and university fish, wildlife and habitat biologists and plant ecologists. Include any such conversations in the habitat assessment and cite as personal communication.

d. An assessment of the project's direct and indirect potential impacts and cumulative impacts on the subject habitat, including water quality impacts.

e. A discussion of potential mitigation measures that would avoid or minimize temporary and permanent impacts, proposed mitigation measures, contingency measures, and monitoring plans.

f. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.

g. Developments in the floodplain must show the one-hundred-year flood elevation contour, the floodway boundary, and the protected area boundary on the site plan.

2. *Habitat Management Plan.* The director may require that all or a portion of the following be included in a habitat management plan:

a. A map drawn to scale or survey showing the following information:

(1) All lakes, ponds, streams, wetlands and tidal waters on or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream or wetland category consistent with the requirements of this chapter;

(2) The location and description of the fish and wildlife habitat conservation area on the subject property, as well as any potential fish and wildlife habitat conservation area within a distance of the subject property that may impact an affected species or habitat; and

(3) The location of any observed evidence of use by a species regulated by the provisions of the fish and wildlife habitat sections of this chapter.

b. An analysis of how the proposed development activities will affect the fish and wildlife habitat conservation area and any affected species including the potential direct, indirect, and cumulative effects of the proposed action on the regulated species and its habitat within the project area.

c. Provisions to reduce or eliminate the impacts of the proposed development activities on any fish and wildlife habitat conservation area and affected species. The HMP should describe components of the project that may benefit or promote the recovery of listed species and are included as an integral part of the proposed project. These conservation (or mitigation) measures serve to minimize or compensate for project effects on the species under review. The following items should be addressed:

(1) Provide specific recommendations, as appropriate, to reduce or eliminate the adverse effects of the proposed activity. Potential measures include: timing restrictions for all or some of the activities; clearing limitations; avoidance of specific areas; special construction techniques; HMP conditions; replanting with native vegetation; potential of habitat enhancement (i.e., fish passage barrier removal); best management practices, etc.;

(2) Include a description of proposed monitoring of the species, its habitat, and mitigation effectiveness.

d. The HMP shall identify the specific habitat objectives the HMP is designed to achieve and include recommendations regarding all actions taken which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term, and/or actions to maintain or enhance the significant features present.

19.37.075 WETLANDS, STREAMS AND LAKES—MITIGATION PLANS—REQUIRED CONTENT.

A. Wetland and buffer impact mitigation plans shall:

1. Include a baseline study that quantifies the existing wetland and buffer functions, functions that will be lost, and the functions after mitigation. This could involve assessing functions using Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, March 2012, Washington State Department of Ecology Publication No. 10-06-011, or as amended;

2. Specify how functions will be preserved or replaced;

3. Specify how impacts will be avoided, minimized or compensated for;

4. Assess the potential changes in wetland hydroperiod from the proposed project and identify how the project design will mitigate adverse impacts to the wetland hydroperiod;

5. Describe the future vegetation community types for monitoring years, including dominant vegetation expected. Plants shall be native species, commercially available or available from local sources, high in food and cover value for fish and wildlife, and mostly perennial;

6. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;

7. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for maintenance and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

8. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful; and

9. Include provisions for an assurance device as provided by Chapter 19.40 to ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occur on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This guarantee shall not be released until the applicant's qualified professional and the planning director sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.

B. Stream, lake and buffer impact mitigation plans shall:

1. Include a baseline study that quantifies the existing functions of the system, functions that will be lost, and the stream and buffer functions after mitigation;

2. Specify how functions will be replaced;

3. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;

4. Where buffer enhancement is proposed, include an analysis of the ability of the buffer to protect water quality, as outlined in the Update on Wetland Buffers: The State of the Science, Final Report, October 2013, Washington State Department of Ecology Publication No. 13-06-11, or as amended;

5. Include provisions for maintaining and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

6. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

7. Include provisions for an assurance device as provided by Chapter 19.40 EMC to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation

is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

C. *Construction Plans.* Construction plans necessary to implement requirements of the detailed mitigation plan shall be provided prior to issuance of construction permits. Plans shall include the proposed construction sequencing and timing; surface and subsurface hydrologic conditions, including proposed hydrologic regimes for compensatory mitigation areas; grading and excavation details, erosion and sediment control measures; a planting plan specifying plant species, quantities, location, size, spacing, density, proper placement, fertilization standards, and provisions for temporary irrigation systems.

19.37.076 CRITICAL AREA REPORTS—ALTERNATIVE BEST AVAILABLE SCIENCE ANALYSIS.

The planning director may, using the review process described in EMC Title 15, Local Project Review Procedures, authorize a modification to the standards in this chapter as follows:

A. An applicant must submit a critical area study by a qualified professional that documents that the proposed development design/standards will result in a net improvement of the functions of the critical area over that which would be obtained by applying the standard prescriptive measures contained in this chapter. The study must address best available science as it relates to the critical area functions.

B. The study must be circulated to appropriate state and federal resource agencies for review and comment opportunity prior to planning director authorization.

C. The development design/standards may include, but are not necessarily limited to, measures prescribed in an approved watershed conservation plan or other similar conservation plan that addresses critical areas protection consistent with this section.

D. The proposed design/standards must not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located.

19.37.080 GEOLOGICALLY HAZARDOUS AREAS.

A. *Designation.* The following geologically hazardous areas shall not be altered except as otherwise provided by this chapter:

1. Landslide hazard areas:

a. Those areas defined as high and very high/severe risk of landslide hazard in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science:

(1) Very high/severe: slopes greater than fifteen percent in the Qtb, Qw, and Qls geologic units; and slopes greater than fifteen percent with uncontrolled fill.

(2) High: slopes greater than forty percent in all other geologic units (not Qtb, Qw, and Qls or uncontrolled fill).

b. Those areas defined as medium risk of landslide hazard in the Dames and Moore Methodology for Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science, when combined with springs or seeps, immature vegetation, and/or no vegetation:

(1) Slopes less than fifteen percent for Qtb, Qw, and Qls geologic units and uncontrolled fill.

(2) Slopes of twenty-five percent to forty percent in all other geologic units.

c. Any area with all three of the following characteristics:

(1) Slopes greater than fifteen percent; and

(2) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(3) Springs, ground water seepage, or saturated soils.

d. Any area which has shown movement during the Holocene epoch (from ten thousand years ago to the present) or which is underlain or covered by mass wastage debris of that epoch.

e. Any area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by wave action.

f. Areas of historic failures, including areas of unstable, old and recent landslides or landslide debris within a head scarp, and areas exhibiting geomorphological features indicative of past slope failure, such as hummocky ground, slumps, earthflows, mudflows, etc.

g. Any area with a slope of forty percent or steeper and with a vertical relief of fifteen or more feet, except those manmade slopes created under the design and inspection of a geotechnical professional, or slopes composed of consolidated rock.

h. Areas that are at risk of landslide due to high seismic hazard.

i. Areas that are at risk of landslides or mass movement due to severe erosion hazards.

2. Seismic/liquefaction hazard areas:

a. Those areas mapped as seismic/liquefaction hazards per the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science.

b. Those areas mapped as high and moderate to high liquefaction susceptibility on the Liquefaction Susceptibility Map of Snohomish County, Washington, Washington State Department of Natural Resources, Palmer, Stephen, et al., September, 2004.

3. Erosion hazard areas:

a. Those areas defined as high and very high/severe risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science:

(1) High erosion hazard areas include slopes of twenty-five to forty percent in Qva and Qal geologic units; and slopes of greater than forty percent in other (not Qva or Qal) geologic units.

(2) Very high/severe erosion hazard areas include slopes of greater than forty percent in Qva and Qal geologic units.

b. Those areas defined as medium risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science, when they contain debris and mud flows, gullying or rifling, immature vegetation, or no vegetation:

(1) Slopes of twenty-five to forty percent in other (not Qva or Qal) geologic units.

4. Other areas which the city has reason to believe are geologically hazardous.

B. *Geologically Hazardous Slope Setbacks and Slope Protection.*

1. *Geotechnical Assessment Requirements.* Development proposals on or within two hundred feet of any area designated as or which, based on site-specific field investigation, the city has reason to believe are geologically hazardous areas shall submit a geological assessment as required by subsection F of this section.

2. The setback buffer requirement shall be based upon information contained in a geological assessment, and shall be measured on a horizontal plane from a vertical line established at the edge of the geologically hazardous area limits (both from the top and toe of slope). In the event that a specific setback buffer is not included in the recommendation of the geological assessment, the setback buffer shall be based upon the standards contained in Chapter 19.18 of the International Building Code (IBC), or as the IBC is updated and amended.

a. If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 19.18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.

b. The city may require larger setback buffer widths under any of the following circumstances:

(1) The land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts.

(2) The area has a severe risk of slope failure or downslope stormwater drainage impacts.

(3) The increased buffer is necessary to protect public health, safety and welfare based upon findings and recommendations of the geological assessment.

3. Unless otherwise permitted as part of an approved alteration, the setback buffers required by this subsection shall be maintained in native vegetation to provide additional soil stability and erosion control. If the buffer area has been cleared, it shall be replanted with native vegetation in conjunction with any proposed development activity.

4. The city may impose seasonal restrictions on clearing and grading within two hundred feet of any geologically hazardous areas.

C. *Permitted Alterations.* Unless associated with another critical area, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow alteration of an area identified as a geologically hazardous area or the setback buffers specified in the IBC if an approved geotechnical report demonstrates that:

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, or erosion or sedimentation to off-site properties or bodies of water;

2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;

3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;

4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;

5. The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;

6. The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;

7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and

8. The improvements are certified as safe as designed and under anticipated conditions by a geologist.

D. *Additional Requirements.* As part of any approval of development on or adjacent to geologically hazardous areas or within the setback buffers required by subsection B of this section:

1. The city shall require:

a. Geologically hazardous areas not approved for alteration and their buffers shall be placed in a critical area protective covenant or tract as required by EMC 19.37.220;

b. Any geologically hazardous area or required setback buffer that is allowed to be altered subject to the provisions of this chapter shall be subject to a covenant of notification and indemnification/hold harmless agreement in a form acceptable to the city attorney. Such document shall identify any limitations placed on the approved alterations.

2. The city may require:

a. The presence of a geologist on the site to supervise during clearing, grading, filling and construction activities which may affect geologically hazardous areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval, and other relevant information concerning the geologically hazardous conditions of the site;

b. Vegetation and other soil-stabilizing structures or materials be retained or provided;

c. Long-term maintenance of slopes and on-site drainage systems.

E. *Prohibited Alterations.* Modification of geologically hazardous areas shall be prohibited under the following circumstances:

1. Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alteration of the slopes is not permitted, except as allowed under EMC 19.37.050. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than twenty-five feet from the top of slopes of twenty-five percent and greater.

2. Any proposed alteration that would result in the creation of or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on site or off site, shall be prohibited.

F. *Geological Assessment.* A geological assessment is a site investigation process to evaluate the on-site geology affecting a subject property and contiguous properties and the extent to which geological factors may be impacted by the proposed development activity.

1. Geological assessments shall be submitted to the department for review and approval as part of the integrated permit review process described in EMC Title 15, Local Project Review Procedures. The department shall review the geological assessment and either:

a. Accept the geological assessment; or

b. Reject the geological assessment and require revisions or additional information.

2. When the geological assessment has been accepted, the department shall issue a decision on the land use permit application as provided for in EMC Title 15, Local Project Review Procedures.

3. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.

19.37.085 WETLAND AND STREAM PRESERVATION AND PROTECTION GOALS—MITIGATION SEQUENCING.

A. *Preservation and Protection Goals.* It is the short-term goal of this chapter that there be no net loss of the functions and values of all critical areas regulated by this chapter. An additional goal is no net loss of wetland acreage. The long-term goal is a net gain in functions and values. To realize critical area preservation goals, the city will require the following methods of impact mitigation in order of preference:

1. Avoid impact altogether by not taking a certain action or parts of an action;

2. Minimize impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impact;

3. Rectify the impact by repairing, rehabilitating or restoring the affected critical areas;

4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;

5. Compensate for the impact by replacing, enhancing, or providing substitute wetland areas and environments;

6. Monitor the impact and take appropriate corrective measures.

Where impacts cannot be avoided, the applicant shall seek to implement other appropriate mitigation actions.

19.37.090 WETLAND DESIGNATION, DELINEATION, MAPPING AND RATING—LAKES.

A. *Wetland Delineation.* Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter.

B. The approximate location and extent of known or suspected wetlands are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and

may be updated as new wetlands are identified. The exact location of a wetland boundary shall be determined through field investigation by a qualified professional applying the approved federal wetland delineation manual and applicable regional supplements methods and procedures.

C. Wetlands shall be rated and regulated according to the categories defined by the Washington State Department of Ecology Washington State Wetland Rating System for Western Washington 2014 Update, or as revised (Ecology Publication No. 14-06-029). Wetlands, as defined by this chapter, shall be classified as category I, category II, category III, or category IV.

1. Category I wetlands are those that: (a) represent a unique or rare wetland type; or (b) are more sensitive to disturbance than most wetlands; or (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a very high level of function. All wetlands that meet one or more of the following criteria shall be considered category I wetlands:

a. Bogs;

b. Mature forested wetlands larger than one acre;

c. Wetlands that perform a very high level of function as evidenced by a score of twenty-three points or more on the Wetland Rating Form—Western Washington.

2. Category II wetlands are ecologically important and provide a high level of function. They are difficult but not impossible to replace. Wetlands that meet the following criteria shall be considered category II wetlands:

a. Wetlands that do not meet the criteria of category I wetlands;

b. A wetland identified by the State Department of Natural Resources as containing "sensitive" plant species;

c. Wetlands with high functions and values as indicated by a score of twenty to twenty-two points on the Wetland Rating System Form—Western Washington.

3. Category III wetlands provide a moderate level of functions. They are typically more disturbed, smaller, and/or more isolated in the landscape than category I or II wetlands. Wetlands that meet the following criteria shall be considered category III wetlands:

a. Wetlands that score sixteen to nineteen points on the Wetland Rating Form—Western Washington.

4. Category IV wetlands provide the lowest level of function and are often heavily disturbed, but still provide important functions. Category IV wetlands include:

a. All wetlands that score nine to fifteen points on the Wetland Rating Form—Western Washington.

19.37.100 WETLAND CRITICAL AREA REPORT CRITERIA.

Repealed by Ord. 3676-19.

19.37.110 STANDARD WETLAND BUFFER WIDTH REQUIREMENTS.

A. *Standard Buffer Width.*

1. The following buffer widths listed in Tables 37.2 and 37.3 apply to all wetlands within the city of Everett. Buffer widths have been established in accordance with the best available science. Buffers are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06029, or as revised and approved by Ecology).

When feasible, a relatively undisturbed vegetated corridor at least one hundred feet wide must be protected between the wetland and any nearby priority habitat. Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If there is a presence of a nearby priority habitat and if the wetland has a habitat function score of six or more, a one-hundred-foot-wide relatively undisturbed, vegetated corridor must be provided between the wetland and other priority habitats if there is a corridor available to provide. If a corridor is available and is not set aside into an easement or tract, the buffers listed in Table 37.2 apply.

User instructions: Use the following two tables to determine wetland buffers. Table 37.2 includes the standard buffers without utilizing the general mitigation measures described below. The reduced buffers in Table 37.3 apply to projects when the applicant elects to incorporate all general mitigation measures. If priority habitat is not present, use Table 37.3.

Table 37.2: Standard Wetland Buffers without General Mitigation Measures

CRITICAL AREA	**BUFFER WIDTHS (feet)**		
WETLAND CATEGORY	**HABITAT FUNCTION SCORES**		
	3-5	**6-7**	**8-9**
I	100	150	300
Based on total score or forested			
I	250	300	
Bogs			
I	200		
Estuarine			
II	100	150	300
Based on total score			
II	150		
Estuarine			
III	80	150	300
IV	50		

Table 37.3: Reduced Wetland Buffers When General Mitigation Measures Are Applied

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	75	110	225
I	Bogs	190	225	
II	All except estuarine	75	110	225
II	Estuarine	110		
III		60	110	225
IV		40		

2. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer vegetation shall be enhanced or restored to the width required by this section. The vegetation shall include native plant communities that are appropriate for the Puget Lowland ecoregion or with a plant community that provides similar functions.

B. *Increased Standard Wetland Buffer Width.* The minimum buffer width stated in subsection A of this section shall be increased:

1. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

a. The minimum buffer for that particular wetland; or

b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less for at least a horizontal distance of ten feet;

2. When the wetland is used by salmonids, plant and/or animal species proposed or listed by the federal government or state as endangered, threatened, rare, candidate, sensitive or monitored; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees, and the increased buffer is necessary to protect such habitat;

3. When a habitat assessment or habitat management plan is required by EMC 19.37.190 and an increased buffer is necessary to protect critical habitat or affected species, the buffer shall be the buffer in the approved habitat assessment or habitat management plan;

4. When the adjacent land is classified as a geologically hazardous area, the buffer shall be the greater of the standard wetland buffer or the setback buffer required by EMC 19.37.080;

5. When the standard buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or

6. When the city finds, based upon a site-specific wetland analysis, that impacts on the wetland from a proposed development can only be mitigated by a greater buffer width.

C. *General Mitigation Measures.* Implementation of all of the following general mitigation measures allows use of the reduced wetland buffers listed in Table 37.3:

1. Direct lights away from the wetland.

2. Locate activity that generates noise away from the wetland.

3. Route all new, untreated runoff away from the wetland while ensuring wetland is not dewatered.

4. Establish covenants limiting use of pesticides within one hundred fifty feet of the wetland.

5. Apply integrated pest management.

6. Retrofit stormwater detention and treatment for roads and existing adjacent development.

7. Prevent channelized flow from lawns that directly enters the buffer.

8. Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.

9. Use privacy fencing; plant dense vegetation to delineated buffer edge and discourage disturbance using vegetation appropriate for the ecoregion; place the wetland and its buffer in a separate tract.

10. Use best management practices to control dust.

D. Where wetland functions have been improved due to voluntary implementation of an approved stewardship, restoration and/or enhancement plan that is not associated with required mitigation or enforcement, the standard wetland buffer width shall be determined based on the previously established wetland category and habitat score as documented in the approved stewardship and enhancement plan.

19.37.120 WETLAND ALTERATION THRESHOLDS AND COMPENSATION.

A. *Wetland Preservation/Alteration Thresholds.*

1. *Category I Wetlands.* All category I wetlands shall be preserved except as provided in this chapter. The planning director, using the review process as described in EMC Title 15, Local Project Review Procedures, may allow alteration of category I wetlands:

a. Where alteration is allowed pursuant to EMC 19.37.050; or

b. The alteration is to allow a public park or public recreational use; provided, that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated;

2. *Category II, III, and IV Wetlands.* All category II, III, and IV wetlands shall be preserved except as provided in this chapter. The planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow alteration of category II wetlands:

a. Where alteration is allowed pursuant to EMC 19.37.050; or

b. Where impacts cannot be avoided, and the applicant demonstrates through a mitigation sequencing analysis that reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid or result in less adverse impact on a regulated wetland or its buffer are not feasible and will not accomplish the basic purpose of the project;

3. *Category I, II, III, and IV Wetlands in the Silver Lake Watershed.* When alteration of wetlands in the Silver Lake Watershed is allowed in subsections A.1 and A.2 of this section, the applicant must also demonstrate to the satisfaction of the planning director and public works director that such activities will result in an enhancement of wetlands which improves the water quality functions of the wetland, or will improve the other functions of the wetland if the water quality functions of the wetland will not be degraded. Any such proposed activities shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures;

4. The director may approve alteration of wetlands and buffers when proposed to restore or enhance wetland functions.

B. *Compensating for Wetland Impacts.* Wetland and buffer alteration allowed by this section shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall wetland or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with subsection C of this section.

4. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, nonnative vegetation, or other material detrimental to the area by replanting disturbed vegetation, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to water quality or habitat exists.

5. Wetland Compensation Ratios. In approving alteration or relocation of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensation for destruction of the functions of the altered wetland and to ensure that such functions are replaced. The ratios in this section apply to creation, restoration, and enhancement which is in-kind (within the same hydrogeomorphic (HGM) class), on or adjacent to the site, timed prior to or concurrent with alteration, and has a high probability of success. The city may accept or recommend compensation which is off site and/or out-of-kind, if the applicant can demonstrate that on-site compensation is infeasible due to constraints such as parcel size or wetland type or that a wetland of a different type or location is justified based on

regional needs or functions. When mitigating allowed impacts to wetlands, the standard ratios in Table 37.4 shall be used, except as otherwise provided below in this subsection.

Table 37.4: Standard Wetland Compensation Ratios

Category and Type of Wetland Impacts	**Reestablishment or Creation**	**Rehabilitation Only[1]**	**Reestablishment or Creation (R/C) and Rehabilitation (RH)[1]**	**Reestablishment or Creation (R/C) and Enhancement (E)[1]**	**Enhancement Only[1]**
All category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
All category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine	Case-by-case	Case-by-case	Case-by-case
All other category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I Based on score for functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I Bog	Not considered possible[2]	6:1 Rehabilitation of a bog	R/C Not considered possible[2]	R/C Not considered possible[2]	Case-by-case
Category I Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine	Case-by-case	Case-by-case	Case-by-case
NOTE: Preservation is discussed in the following section.					
Creation = The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevation that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. Establishment results in a gain in wetland acres.					
Reestablishment = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging					

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only[1]	Reestablishment or Creation (R/C) and Rehabilitation (RH)[1]	Reestablishment or Creation (R/C) and Enhancement (E)[1]	Enhancement Only[1]
ditches, or breaking drain tiles. Activities could also involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland. Reestablishment results in a gain in wetland acres.					
Rehabilitation = The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic function of a degraded wetland. Activities could involve breaching a dike or reconnecting wetland to a floodplain or returning tidal influence to a wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.					
Enhancement = The manipulation of the physical, chemical or biological characteristics of a wetland site to heighten, intensify or improve functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying the site elevation or the proportion of open water to influence hydroperiods, or some combination of these. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.					

[1] These ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

[2] Bogs are considered irreplaceable wetlands because they perform some special functions that cannot be replaced through compensatory mitigation. Impacts to such wetlands would therefore result in a net loss of some functions no matter what kind of compensation is proposed.

a. *Increased Mitigation Ratios.* The city may increase the ratios under any one of the following circumstances:

(1) Uncertainty as to the probable success of the proposed restoration or creation;

(2) Significant period of time between destruction and replication of wetland functions;

(3) The proposed mitigation will result in a lower category wetland or projected losses in functions relative to the wetland being impacted;

(4) The relocation is off site or the replacement is with out-of-kind compensation;

(5) The wetland has been illegally filled or altered.

b. *Decreased Mitigation Ratios.* The city may decrease these ratios under the following circumstances:

(1) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success.

(2) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions will provide significantly greater functions than the wetland being impacted.

(3) The mitigation actions are conducted in advance of the impact and have been shown to be successful.

c. In lieu of the ratios described above, mitigation ratios may be calculated in one of the following ways:

(1) Using the method in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, March 2012, Washington State Department of Ecology Publication No. 10-06-011, or as amended.

(2) For properties designated "urban mixed-use industrial" in the city's shoreline master program, the applicant shall use the Snohomish Estuary Wetland Integration Plan (SEWIP, 1997) and Salmon Overlay (2001) for projects that include wetland compensation. Per Table 37.4, mitigation ratios for estuarine wetlands shall be determined on a case-by-case basis.

d. In no case shall the mitigation acreage be less than that which is altered.

6. When wetland compensation is allowed, the city may require that the wetland compensation be completed and functioning prior to allowing the existing wetland to be filled or altered. For category I wetlands, the city shall require the relocated wetland area to be completed and functioning prior to allowing the existing wetland to be altered.

7. The city may limit certain development activities near a wetland to specific months in order to minimize impacts on wetland functions.

8. The city may apply additional conditions or restrictions or require specific construction techniques in order to minimize impacts on wetland functions.

9. Wetland compensation shall not occur in areas having high-quality terrestrial habitat.

10. When wetland compensation is allowed, mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolation and fragmenting effects of development on habitat areas.

11. When wetland creation is proposed, all required buffers for the creation site shall be located on the proposed creation site, except where mitigation banking is used to purchase

buffer credits. Properties adjacent to or abutting wetland creation projects shall not be responsible for providing any additional buffer requirements.

12. *In-Lieu Fee Mitigation.* In-lieu fee (ILF) mitigation is a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a program sponsor to satisfy compensatory mitigation requirements for unavoidable impacts to wetlands and other aquatic resources. Per federal rule, sponsorship of ILF programs is limited to governmental, tribal, or nonprofit natural resource management entities. Similar to a wetland mitigation bank, an ILF program sells credits to permittees whose unavoidable impacts occur within a specified geographic area (service area). When credits are purchased from the ILF program, the permittee's obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The sponsor is then required to implement mitigation within a specified time frame, working with regulatory agencies to make sure impacts are fully mitigated. ILF programs are approved by the U.S. Army Corps of Engineers and the Washington State Department of Ecology. The city may allow compensation for unavoidable impacts to wetlands through contribution to an approved ILF program.

C. *Wetland and Buffer Mitigation Plans.* When wetland or buffer alteration or buffer reduction is permitted by this chapter, a mitigation plan shall be required to describe the methods the applicant will use to minimize impacts to wetland functions. A detailed mitigation plan shall be approved by the city prior to any development activity occurring on a lot upon which wetland or wetland buffer alteration, restoration, creation or enhancement is proposed. See EMC 19.37.075 for required wetland mitigation plan content.

19.37.125 WETLAND MITIGATION BANKS.

A. Wetland mitigation banks are sites where wetlands are restored, created, enhanced, or, in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. Banks typically involve the consolidation of many small wetland mitigation projects into a larger, potentially more ecologically valuable site. Such consolidation encourages greater diversity of habitat and wetland functions. It also helps create more sustainable systems. Banks provide a greater likelihood of success over permittee-responsible mitigation projects, since the banks are up and running before unavoidable damage occurs to a wetland(s) at another site.

1. The city may allow wetland mitigation banking in lieu of other forms of wetland impact mitigation when the mitigation site being used for the credit allowed pursuant to this section is either a wetland created from a site which was previously nonwetland, a wetland of lesser size or functional value than the wetland being altered, or where the mitigation bank site substantially increases wetland functions in the watershed within which it is located. Under the wetland mitigation banking process, alteration of a wetland on the development site shall occur only when the created or enhanced wetland is successfully functioning in accordance with an approved wetland mitigation plan. The created or enhanced wetland shall have a higher wetland function rating than that being altered. In evaluating a wetland mitigation banking proposal, the planning director shall determine the amount of credit given for mitigation banking using the ratios described in EMC 19.37.120.B.5 as a guide. The amount of credit will be dependent upon the functions of the wetland being altered and the wetland being used for mitigation banking. The city, using the review process described in EMC Title 15, Local Project

Review Procedures, may allow wetland mitigation banking under any of the following circumstances:

a. When alteration is allowed pursuant to the "reasonable use" exception as provided in EMC 19.37.050(B)(6);

b. When alteration is allowed for a water-dependent or water-related use;

c. When on-site or off-site mitigation in the immediate vicinity of the project is not reasonable;

d. When the wetland being altered is of a lower quality and has lesser functions than the wetland which is being used for the mitigation banking.

2. Wetland mitigation banks may be approved under the provisions of Chapter 173-700 WAC. For any wetland mitigation bank certified under Chapter 173-700 WAC, credits from a wetland bank may be approved for use as compensation for unavoidable impacts to wetlands when:

a. The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts.

b. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

c. Replacement ratios for projects using bank credits shall be consistent with the terms and conditions of the bank's certification.

a. d. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

19.37.130 AREAS OF SPECIAL FLOOD HAZARD.

Areas of special flood hazard shall be governed by the provisions of Chapter 19.30.

19.37.140 FISH AND WILDLIFE HABITAT CONSERVATION AREAS DESIGNATION AND MAPPING.

Repealed by Ord. 3676-19.

19.37.150 LAKES, PONDS, AND CREATED PONDS.

Repealed by Ord. 3676-19.

19.37.160 STREAMS AND LAKES.

A. Streams shall be classified based upon an amended version of the water classification system established under WAC 222-16-030 as follows:

1. *Type S Stream.* Those streams, within their ordinary high water mark, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant thereto, including the periodically inundated areas of their associated wetlands.

2. *Type F Stream.* Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands, that are not Type S streams, and which are demonstrated or provisionally presumed to be used by salmonid fish. Stream segments which have a width of two feet or greater at the ordinary high water mark and have a gradient of sixteen percent or less for basins less than or equal to fifty acres in size, or have a gradient of twenty percent or less for basins greater than fifty acres in size, are provisionally presumed to be used by salmonid fish. A provisional presumption of salmonid fish use may be refuted at the discretion of the community development director where any of the following conditions are met:

a. It is demonstrated to the satisfaction of the city that the stream segment in question is upstream of a complete, permanent, natural fish passage barrier, above which no stream section exhibits perennial flow;

b. It is demonstrated to the satisfaction of the city that the stream segment in question has confirmed, long-term, naturally occurring water quality parameters incapable of supporting salmonid fish;

c. Sufficient information about a geomorphic region is available to support a departure from the characteristics described above for the presumption of salmonid fish use, as determined in consultation with the Washington State Department of Fish and Wildlife, the Department of Ecology, affected tribes, or others;

d. The Washington State Department of Fish and Wildlife has issued a hydraulic project approval pursuant to RCW 77.55.100, which includes a determination that the stream segment in question is not used by salmonid fish;

e. No salmonid fish are discovered in the stream segment in question during a stream survey conducted according to the protocol provided in the Washington Forest Practices Board Manual, Section 13, Guidelines for Determining Fish Use for the Purpose of Typing Waters under WAC 222-16-031; provided, that no unnatural fish passage barriers have been present downstream of said stream segment over a period of at least two years;

f. The following stream segments shall not be considered Type F streams:

(1) Merrill and Ring Creek south of Merrill Creek Parkway;

(2) Edgewater Creek;

(3) Narbeck Creek;

(4) Forgotten Creek.

3. *Type Np Stream.* Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands, that are perennial and are not Type S or Type F streams. However, for the purpose of classification, Type Np streams include intermittent dry portions of the channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the city.

4. *Type Ns Stream.* Those stream segments within the ordinary high water mark, including the periodically inundated areas of their associated wetlands, that are not Type S, Type F, or Type Np streams. These include seasonal streams in which surface flow is not present for at least some portion of a year of normal rainfall that are not located downstream from any Type Np stream segment.

B. *Lakes.* Silver Lake shall be protected as required by the shoreline master program. All other lakes shall be subject to the regulations in this chapter.

19.37.170 STANDARD STREAM AND LAKE BUFFER REQUIREMENTS.

A. *Standard Buffer Width.* It is the goal of this chapter to preserve streams and their buffers in a natural condition to the maximum extent possible.

1. Buffers shall be measured from the top of the upper bank or, if that cannot be determined, from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the top of the bank or ordinary high water mark shall be determined so as to include the entire stream feature.

2. The standard buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer width shall be increased as required by this section.

3. Except as otherwise provided by EMC 19.37.050, the following minimum buffers of native vegetation shall apply to streams based upon stream classification:

Table 37.5: Stream Buffers

Stream Classification (Type)		
	Standard Buffer: Intact Native Vegetation	**Standard Buffer: Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species**
Type S	100 feet	150 feet
Type F	100 feet	150 feet

Stream Classification (Type)		
	Standard Buffer: Intact Native Vegetation	**Standard Buffer: Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species**
Type Np	50 feet	75 feet
Type Ns	50 feet	75 feet

B. *Standard Buffer Width Increase.* The city shall require increased buffer widths as necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual impacts and the increased buffer width is necessary to protect the critical areas described in this subsection. Circumstances which may require buffers beyond minimum requirements include, but are not limited to, the following:

1. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

    a. The minimum buffer for that particular stream; or

    b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less;

2. The stream reach affected by the development proposal serves as critical fish habitat for spawning or rearing as determined by the city using information from resource agencies including, but not limited to, the Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and recognized tribal nations;

3. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting or lookout trees;

4. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;

5. Increased buffer width is necessary to effectively include the riparian corridor of the stream.

C. *Standard Stream Buffer Width Reduction with Enhancement.* The planning director may, using the review process as described in EMC Title 15, Local Project Review Procedures, reduce the standard stream buffer width only when there has previously been substantial legal alteration of the stream and/or buffer on the subject lot or adjoining lots resulting in the existing buffer being unvegetated, sparsely vegetated, or vegetated with nonnative invasive species and when buffer enhancement is provided per the following criteria. Where buffer reduction with enhancement is permitted by this chapter, it shall be limited to portions of buffers that have minimal functions due to prior legal alteration.

1. The planning director shall only allow a buffer width reduction when the proposal includes a critical area and buffer enhancement plan that improves the functions of the buffer and the critical area.

2. A mitigation/enhancement plan shall be prepared in accordance with this chapter.

3. If a limited portion of the buffer has been previously legally altered and meets the criteria in this section, a buffer width reduction may be approved for that portion of the required buffer only.

4. The following criteria shall be used to determine when a required buffer is degraded and substantial legal alterations are present:

a. The required buffer area has been graded or substantially altered and has not been substantially revegetated (i.e., the buffer is covered with gravel, impervious surface, mowed lawn, or is vegetated with primarily invasive species such as reed canary grass, Himalayan blackberry, purple loosestrife, or other nonnative invasive species covering more than seventy-five percent of the buffer area).

b. Substantial clearing of the buffer was authorized and substantial revegetation with native species has not occurred.

c. A buffer that has been logged in the past but that has been revegetated with an overstory of willow, cottonwood, alder, evergreen, or mixed evergreen/deciduous overstory, and an understory shrub layer of noninvasive species does not constitute substantial alteration.

D. *Riparian Wetland.* Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement shall apply.

E. *Lake Buffers.* Lakes have the following buffers of native vegetation:

a. Lakes used by salmonids: one hundred feet;

b. Lakes with no salmonid use: fifty feet.

If a wetland or stream occurs along the fringe of a lake, the buffer shall be the greater of that required for the lake or for the wetland or stream.

F. *Buffers for Restored Stream Channels.* When a culverted portion of a stream is proposed to be restored to an open channel, the buffer width shall be determined by the director following review of a critical area study. The study must include an analysis of the buffer width necessary to protect water quality and habitat functions of the stream.

G. *Riparian Corridors.* When a development is proposed on a lot with a disturbed riparian corridor, the city shall require that the habitat be enhanced by creating more diversity and eliminating any source of degradation, including, but not limited to:

1. Vegetative plantings of native or preferred wildlife food species;

2. Construction of nesting islands or installation of nesting boxes;

3. Removal of pollutant sources or fish movement blockages; or

4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat.

19.37.180 STREAM ALTERATION THRESHOLDS AND COMPENSATION.

A. *Stream Preservation/Alteration Thresholds.*

1. *Type S Streams.* All Type S streams shall be regulated by the city of Everett shoreline master program.

2. *Type F Streams.* All Type F streams shall be preserved. The city may only allow alteration of Type F streams under the following circumstances:

a. Where alteration is allowed pursuant to EMC 19.37.050;

b. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW;

c. When the proposal results in significant restoration of functions to the stream segment and the alteration is approved by the Washington State Department of Fish and Wildlife.

3. *Type Np and Type Ns Streams.*

a. Except as provided in this subsection, no alteration of a Type Np or Ns stream shall be allowed except as otherwise provided by EMC 19.37.050; or

b. The planning director may, using the review process described in EMC Title 15, Local Project Review Procedures, allow alteration or relocation of Type Np and Ns streams under the following conditions:

(1) Stream and buffer functions in the relocated/altered stream section must be equal to or greater than the functions provided by the stream and buffer prior to relocation/alteration;

(2) The equivalent base flood storage volume shall be maintained;

(3) There shall be no impact to local ground water;

(4) There shall be no increase in water velocity;

(5) There is no interbasin transfer of water;

(6) The relocation shall occur on site and shall not result in additional encumbrances on neighboring properties unless necessary easements and waivers are obtained from affected property owners;

(7) The relocation maintains or enhances existing connections to other critical areas and priority habitats.

c. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW.

4. *Watershed Management Plans.* The city shall not allow relocation or alteration of any Type F stream located within an area where an adopted watershed management plan does not allow for stream alteration or relocation, except when allowed by EMC 19.37.050, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

B. *Compensating for Stream Impacts.* Stream system and buffer alteration, when allowed by this chapter, shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with this section.

4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, nonnative vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing tightlined or culverted portions of a stream from pipes/culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functions exists.

5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as

compensation for destruction of the functions of the altered stream system and to ensure that such functions are replaced.

6. When stream system relocation or compensation is allowed, the city shall require that the stream relocation be completed prior to allowing the existing stream to be filled or altered.

7. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.

8. The city may apply additional conditions or restrictions, or require specific construction techniques, in order to minimize impacts to stream systems and their buffers.

9. Stream compensation shall not occur in areas having high-quality terrestrial habitat.

C. *Voluntary Daylighting of Streams in Pipes and Culverts.*

1. To encourage daylighting of streams in pipes and culverts, the planning director may modify development standards as set out in subsection C.2 of this section when the applicant submits a plan for daylighting that meets the following criteria:

a. The plan is prepared by a qualified professional;

b. The ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor is compatible with and protects the ecological functions of the existing riparian corridor upstream and downstream and does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and

c. If the plan proposes daylighting the pipe or culvert in a different location on the parcel from its current location or off the parcel, the ecological functions required in subsection C.1.b of this section are provided as effectively as they would be without the relocation.

2. If the director finds the conditions in subsection C.1 of this section are met, the director may modify the following development standards. The modification shall be the minimum to provide sufficient area to meet the standards in subsection C.1 of this section and shall be in the following order of priority:

a. Yard and/or setback requirements on the property may be reduced, unless reducing them is injurious to safety.

b. The stream and adjacent buffer area may count toward required landscaping.

c. The stream and adjacent buffer area may count toward open space requirements for all multiple-family and M-1 zone requirements.

d. Building heights may be increased.

19.37.185 BUFFER WIDTH AVERAGING FOR WETLANDS, LAKES AND STREAMS.

The city may allow buffer width averaging; provided, that the total area on the lot contained within the buffer is not less than that required within the standard buffer, and that averaging will not reduce the critical area functions. The city may require buffer width averaging in order to provide protection to a particular portion of a critical area which is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the critical area. The adjusted minimum buffer width shall not be less than seventy-five percent of the standard buffer width.

19.37.190 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.

A. All areas meeting the definition of fish and wildlife habitat conservation areas are subject to the regulations in this chapter.

B. *Fish and Wildlife Habitat Conservation Areas Mapping.* The approximate location and extent of fish and wildlife habitat conservation areas within the city of Everett's planning area are shown on maps compiled and maintained by the city planning and community development department. These maps shall be used as a general guide only for the assistance of property owners, project applicants, and other interested parties; boundaries are generalized. The actual type, extent and boundaries of fish and wildlife habitat conservation areas shall be determined by a qualified scientific professional according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the habitat location or type shown on the city's fish and wildlife habitat conservation areas maps and the criteria or standards of this chapter, the criteria and standards resulting from the field investigation shall control.

C. Other mapping sources include the Washington State Department of Fish and Wildlife priority habitat and species maps.

D. *Goals and Additional Requirements.* If a development or redevelopment is proposed on or within a distance which could impact habitats of primary association, significant biological areas, and/or vegetative corridors linking watersheds, as described in this title, the applicant shall provide a habitat assessment. In areas within the riparian habitat zone or special flood hazard area, a biological assessment is required. The biological assessment shall be prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation produced by FEMA Region 10, April 2011, or as amended. The biological assessment must demonstrate that any proposed development in the riparian habitat zone or the floodway, coupled with appropriate habitat conservation measures, does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.

If the habitat assessment/biological assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conservation area, the applicant shall provide a habitat management plan (HMP) as described in subsection G of this section, prepared by a wildlife biologist for evaluation by the city, state and federal agencies. The HMP must address activities that can be taken to preserve, protect, or enhance the affected fish and wildlife habitat conservation areas. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. If the habitat assessment finds that the proposed development could result in substantial elimination of or significant reduction in riparian corridors, existing connections between critical areas, or continuous vegetated corridors linking watersheds, the HMP must analyze alternatives

and measures to maximize the maintenance of existing corridors. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

1. *Distance for Habitats of Primary Association.*

a. *Salmonids and Steelhead.* When development is proposed within the distances specified below, a habitat assessment shall be required.

(1) Within two hundred fifty feet of the Snohomish River or its estuary;

(2) Within two hundred feet of a Type F stream including but not limited to North Creek or Swamp Creek together with tributaries with direct confluence to those streams and the associated wetlands, and marine shorelines;

(3) Within one hundred fifty feet of Lake Chaplain;

(4) Within two hundred twenty-five feet of a Type Np or Ns stream with unstable slopes within the special flood hazard area;

(5) Within one hundred fifty feet of a Type Np or Ns stream without unstable slopes within the special flood hazard area; or

(6) Within the special flood hazard area.

b. *Other Species.* If habitats of primary association are identified for other species, the director, after consulting with the Department of Fish and Wildlife, shall determine the appropriate distance from a designated fish and wildlife habitat conservation area which will require a habitat assessment or HMP.

c. *Continuous Vegetative Corridors Linking Watersheds and Significant Biological Areas.* If a development is proposed within an area that provides a continuous vegetative corridor linking watersheds or a significant biological area, a habitat assessment is required.

E. The following actions are exempt from other requirements of this chapter, but may require preparation of a habitat assessment or biological assessment when conducted within a fish and wildlife habitat conservation area:

1. EMC 19.37.060(B)(1), minor utility construction projects.

2. EMC 19.37.060(B)(4), trails with impervious surfaces.

3. Any development application that involves ESA Section 7 consultation with federal agencies is required to follow that process to determine impacts to endangered species and mitigation requirements rather than the procedure described herein. However, the application must demonstrate compliance with all applicable city regulations, and must submit a copy of the biological assessment provided to federal agencies as part of the city's permit process.

4. Maintenance of critical public infrastructure.

F. *Habitat Assessment.*

1. A habitat assessment may be integrated into another critical area study or provided as a separate report, provided the requirements of this subsection are met.

2. The habitat assessment shall be completed by a qualified professional with expertise and experience in preparing fish and wildlife critical area reports or biological assessments.

3. The purpose of the assessment is to determine whether or not a fish or wildlife habitat conservation area identified in subsection B of this section and any associated buffer are located on or adjacent to a proposed development, and whether the proposed development could potentially adversely impact the regulated fish or wildlife habitat area and affected species.

4. If an approved habitat assessment determines that no fish or wildlife habitat conservation areas identified in subsection B of this section or associated buffers are present on or adjacent to the site, or that the proposal will not adversely impact those areas and/or affected species, then the fish and wildlife habitat area review will be considered complete.

5. If the habitat assessment determines that a fish or wildlife habitat conservation area identified in subsection B of this section or associated buffers are present on or adjacent to the proposed development and that the proposal will potentially adversely impact those areas and/or affected species, an HMP shall be prepared. The HMP must identify all actions that could be taken and which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term and/or actions to maintain or enhance the significant features present.

6. The director may consult with the Department of Fish and Wildlife before accepting the habitat assessment as final, and if recommended by the Department of Fish and Wildlife may require preparation of an HMP.

7. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.

8. The department shall review the habitat assessment and either:

a. Accept the habitat assessment as complete and include any recommended mitigation measures necessary to reduce impacts to the critical fish and wildlife habitat conservation areas or affected species as project requirements; or

b. Require preparation of an HMP if the habitat assessment indicates potential unmitigated adverse impacts to the critical fish and wildlife habitat conservation areas or affected species.

G. *Habitat Management Plan.*

1. *HMP Submittal and Review Process.* The habitat management plan shall be prepared by a qualified professional who understands the habitat requirements for the affected species. The consultant must demonstrate such expertise to the satisfaction of the director, who may require resumes, work examples or other information demonstrating professional expertise on relevant

habitat and/or fisheries issues. The city will meet with the consultant and direct preparation of the habitat management plan. The city must review and accept the habitat management plan as complete before issuing any approvals for the proposed development. In the event of a dispute regarding appropriate content in the habitat management plan, the city may require additional studies or additional supporting information as provided for by this chapter.

2. A biological assessment which meets the requirements of federal and state agencies may be accepted as meeting these requirements.

3. The HMP shall be evaluated by city, state and federal agencies with permit jurisdiction or expertise, as required by this section, and the director shall consider all comments submitted by state and federal agencies, and require necessary revisions to the HMP, if any, prior to accepting the HMP as final.

4. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts to the habitat conservation area and affected species. Mitigation measures shall be based upon the analysis, conclusions, and recommendations contained in the HMP. At a minimum, all requirements and mitigation measures necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term shall be required as permit conditions for the development proposal.

H. *Compensation for Impacts within the One-Hundred-Year Floodplain.*

1. Compensation must be provided for any effects to floodwater storage and fish habitat function within the one-hundred-year floodplain. Indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) must be mitigated such that equivalent or better salmon habitat protection is provided.

2. The mitigation plan shall stipulate avoidance and conservation measures, as are needed to ensure that there is no net adverse effect during any phase of the project. Outside the floodway or riparian habitat zone, the mitigation plan shall include such avoidance, minimization, restoration, conservation or compensation measures to mitigate all impacts.

3. Calculation of impacts and mitigation shall be performed in accordance with Planning Director Interpretation No. 2011-1, or as amended.

4. The following priorities for mitigation of impacts to fish habitat within the one-hundred-year floodplain shall be considered in the habitat assessment and mitigation plan, with the long-term goal of improving functions and values of fish habitat in the estuary over existing conditions:

a. Assignment (purchase) of equivalent mitigation credits from an established mitigation bank within the estuary;

b. Creation or restoration of the functions and values of fish habitat in an area that is available to fish more frequently than the habitat being impacted;

c. Creation or restoration of off-channel refuge habitat;

d. Restoration of fish habitat where it has been previously eliminated or degraded;

e. Enhancement of existing habitat to improve functions and values;

f. Buffer enhancement in riparian habitat areas;

g. Replacement of the habitat functions and values that are impacted by development.

5. Also in accordance with RPA-3.A.3.b, where conditions permit, the city shall require development within the one-hundred-year floodplain to use low impact development (LID) methods consistent with the city's stormwater management regulations, to minimize or avoid stormwater effects.

6. All development proposals shall protect, enhance, or restore habitat to the maximum extent practicable, either on site or off site.

7. When development occurs in floodplain areas, the portion of the site not elevated above the one-hundred-year flood elevation shall be designed to create floodplain refugia and prevent stranding of aquatic species during flood events to the maximum extent practicable.

8. Restoration of fish habitat either on site or off site is allowed in order to mitigate for habitat impacts caused by development within the floodplain. Restoration and mitigation for impacts may occur in areas which flood more frequently than the area proposed for development (e.g., tidal restoration project that provides greater habitat benefits to juvenile salmonids).

9. The city shall have the authority to require changes in the design of a development if necessary to avoid, minimize or mitigate impacts to endangered species or habitat for such species.

19.37.200 GROUND WATER DISCHARGE AREAS—SEEPS AND SPRINGS.

Lots which contain or are affected by springs, seeps or ground water discharge areas shall be evaluated to determine the relationship the discharge has on geologically hazardous areas, wetlands, streams, fish, plant and wildlife habitat areas. An analysis of such features shall be included in the application for development of the subject property. The city may allow modification of such features consistent with the provisions of this chapter related to geological hazards, streams, wetlands, fish, plant, and wildlife habitat areas, as applicable.

19.37.210 LOT AREA—LOT COVERAGE—PERMITTED NUMBER OF DWELLING UNITS IN MULTIPLE-FAMILY DEVELOPMENTS.

Repealed by Ord. 3676-19.

19.37.220 CRITICAL AREA PROTECTIVE REQUIREMENTS—SETBACKS FROM BUFFERS—FENCING—SIGNS—COVENANTS.

A. *General Requirements.* Storage of building materials, junk and other items is not permitted within critical areas or buffers. All construction staging areas must be shown on approved plans and located outside of critical areas and buffers.

B. *Setbacks from Buffers.* To maintain the integrity of the buffer, principal buildings shall be set back a minimum of ten feet from the edges of all critical area buffer boundaries. All other structures and improvements shall maintain a setback of five feet from the edge of the buffer.

C. *Fencing and Other Protection Mechanisms.* Except for utility and road projects, the city shall require that any development proposed on a lot which contains or adjoins a critical area provide a fence or other structural protection along the outer edge of a buffer to minimize encroachment and disturbance. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife habitat corridors along critical fish and wildlife areas.

D. *Signs.* The city may require the applicant to provide informational signs in conspicuous locations on the fence or near the wetland to identify the wetland as a critical area and the importance of maintaining it in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 19.36.

E. *Protection of Significant Trees within Buffers (Heritage Trees and Evergreens at Least Eight-Inch Diameter at Breast Height).* If trees are identified on the outer edge of the buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:

1. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.

2. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.

3. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.

4. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.

5. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.

6. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.

7. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

F. *Critical Area Covenants.* Except as provided for below, the city shall require that all features classified as critical areas by this chapter and their buffers, including fish and wildlife habitat conservation areas, be placed in critical area protective covenants. Covenants shall not be required for:

1. Utility and road projects in public rights-of-way.

2. Utility and road projects on private easements where the proponent does not own the land.

3. Any development within the special flood hazard area will require a notice on title that the property contains land within the riparian habitat zone and/or special flood hazard area.

G. *Critical Area Tracts.* The city may require that any area classified as a critical area and its buffer be placed in a separate tract, rather than included in the protective covenant. A tract shall be required when the proposal includes a short subdivision or binding site plan. Such a tract shall remain in the same ownership as the parcel it was segregated from; placed into undivided common ownership of all lots within a proposed subdivision, short subdivision, or binding site plan; or dedicated to a public agency which is willing to accept the tract for long-term management of the protected resource.

H. *Notice on Title.* The owner of any property on which a development proposal is submitted shall file with the Snohomish County auditor a notice approved by the planning department, which shall provide notice in the public record of the presence of the critical area covenant or tract, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the city may approve any development proposal on the site. The notice shall run with the land, and failure to provide such notice to any purchaser prior to transferring any interest in the property is a violation of this chapter.

19.37.230 APPEALS.

Repealed by Ord. 3676-19.

19.37.240 ASSURANCE DEVICES.

The city shall require performance or maintenance assurance devices in accordance with Chapter 19.40 to ensure compliance with this chapter and adequate protection and maintenance of critical areas.

19.37.250 PREVIOUSLY ALTERED CRITICAL AREAS.

It is the goal of this chapter to restore and enhance the condition of critical areas which have been previously altered. Properties containing critical areas which have been previously altered may be developed in accordance with all requirements of this chapter and this title of the code.

A. *Legal Alterations.* Critical areas regulated by this chapter which previously have been legally altered in accordance with all local, state and federal regulations in effect at the time of alteration may be developed in accordance with the requirements of this chapter. Any prior alteration which was legally commenced that resulted in a critical area which is regulated by this chapter being reclassified as buildable shall be evaluated using the review process described in EMC Title 15, Local Project Review Procedures. The planning director may approve any development proposal which meets all other requirements of this title, or modify such proposal based upon the impacts that the proposal would have on any remaining area classified by this chapter as a critical area. The planning director shall use all authority granted by this chapter, SEPA, or other legal mechanism to require enhancement of the previously altered critical area to the condition which would be required by this chapter for new development, to the maximum extent feasible.

B. *Unauthorized Alterations.*

1. Critical areas regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title; provided, that all critical areas which were illegally altered shall be considered critical areas and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains a critical area that has been illegally altered shall be reviewed by the planning director using the review process described in EMC Title 15, Local Project Review Procedures.

2. The planning director shall require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered critical area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that which has been altered if the alternative location will result in a net improvement in functions or a higher quality critical area than possible in the area which has been previously altered.

3. Any illegal alteration of a critical area that occurred prior to the effective date of the ordinance codified in this chapter which is not proposed for development as allowed by this chapter shall be restored as provided by this section.

19.37.260 ENFORCEMENT—RESTORATION PLANS.

A. Any person, firm, corporation, or association or any agent thereof who violates any provision of this chapter shall be subject to the enforcement provisions of Chapter 1.20 EMC and this title.

B. *Restoration of Impacts Required.* Any unauthorized impacts on a critical area feature or buffer will require restoration of the affected area to an equivalent or improved condition prior to the violation occurring. A restoration plan must be consistent with the requirements of this chapter and a public works permit may be required by the city. If an equivalent or improved condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the portion of the critical area that cannot be restored, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the evaluation methods of the International Society of Arboriculture. In addition to the authority of the city's code enforcement officer to impose penalties pursuant to Chapter 1.20 EMC, the code enforcement officer may impose the fine described in this section as applicable.

C. Restoration plans shall include, but not be limited to, the replacement of all improperly removed vegetation with approved species such that the biological and habitat values will be replaced to an equivalent or improved condition, improper fill removed and slope stabilized. Studies by a qualified expert shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.

D. Restoration shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored ground cover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the city.

E. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this chapter until the property is fully restored in compliance with this chapter and all penalties are paid.

F. Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of this chapter or the failure to comply with the provisions of this chapter is declared to be a public nuisance.

EXHIBIT B

CHAPTER 19.37 CRITICAL AREAS

INTRODUCTION

19.37.010 USER GUIDE

Many areas of Everett have been or may become designated, identified, inventoried, classified or rated as critical areas by the city or other public agencies. This chapter establishes regulations for development within or near all critical areas. If you are interested in developing property identified as containing or adjacent to steep slopes, lakes, streams, marine waters, wetlands, springs, erosion hazard areas, landslide hazard areas, seismic hazard areas, or other unstable soil conditions, you should read this chapter. This chapter contains more stringent requirements than other provisions within this title for affected properties. These regulations supersede any less restrictive requirements contained elsewhere in this title. No action may be undertaken by any person which results in any alteration of a critical area or its buffer unless such alteration complies with the requirements of this chapter. Alteration includes the terms “use” and “development” as defined in this title, and includes any modification of the natural environment of critical areas or their buffer including any clearing, grading, filling and/or excavation. Certain exceptions to the requirements of this chapter are listed in EMC 19.37.050.

19.37.020 PURPOSE AND GOALS

It is the short-term goal of this chapter that there be no net loss of the functions and values of all critical areas regulated by this chapter. An additional goal is no net loss of wetland acreage. The long-term goal is a net gain in functions and values.

The purpose of this chapter is to designate, classify and protect the critical areas in and the functions and values of critical areas the Everett community by establishing standards for development and use of properties which contain or adjoin critical areas and thus protect the public health, safety, and welfare by:

A. Preserving, protecting, and restoring critical areas and their ecological functions and values by regulating development within such areas and their buffers;

B. Mitigating unavoidable adverse impacts to critical areas by regulating alterations in and adjacent to critical areas;

C. Protecting the public from personal injury, loss of life, or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;

D. Avoiding publicly financed expenditures to correct misuses of critical areas, which may cause:

1. Unnecessary maintenance and replacement of public facilities,

2. Publicly funded mitigation of avoidable impacts,

3. Public costs for emergency rescue and relief operations where the causes are avoidable, or

4. Degradation of the natural environment;

E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;

F. Alerting appraisers, assessors, builders, developers, owners, real estate agents, potential buyers or lessees, and other members of the public to the presence of critical areas and the respective development limitations of such areas;

G. Providing city officials with sufficient information, direction and authority to protect critical areas when evaluating public or private development proposals;

H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 19.43 EMC, the city's comprehensive plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city; and

I. Providing for the maintenance and enhancement of solar access, and/or elimination of future potential hazards or nuisances while protecting critical area functions and values.

19.37.030 APPLICABILITY

A. This chapter establishes regulations for the protection of critical areas and applies to all lands, all land uses and development activity, and all structures or facilities, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, government agency, or other entity that owns, leases or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter. No alteration of a critical area may occur until the city has issued all approvals required by this chapter. By way of example and not limitation, no development permit may be issued; no subdivision of land may be approved; no clearing, filling, or grading may occur; nor may any use be established, altered, or expanded on any lot until approvals required by this chapter have been granted by the city.

B. For development proposals on properties within shoreline jurisdiction, the shoreline master program applies in addition to the regulations contained in this chapter.

C. When any provision of this chapter or any existing easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical area applies.

D. In addition to the requirements of this chapter, the applicant shall obtain all necessary state, federal and other local permits.

19.37.040 PROTECTION OF CRITICAL AREAS

A. On all lots containing or within three hundred feet of critical areas, the following features and their buffers shall not be altered or developed except as otherwise permitted by this chapter:

1. Areas of special flood hazard (if located in a designated floodplain, also see Chapter 19.30 EMC);

2. Wetlands;

3. The following geologically hazardous areas:

    a. Erosion hazard areas;

    b. Landslide hazard areas;

    c. Seismic (liquefaction) hazard areas;

4. Fish and wildlife habitat conservation areas, including streams/riparian areas, lakes, marine waters, habitats of primary association, continuous vegetative corridors linking watersheds, and significant biological areas as defined in this title;

5. Ground water discharge areas, such as springs and seeps.

B. All actions must be designed and constructed in accordance with mitigation sequencing per EMC 19.37.100 to achieve no net loss of critical area functions and values.

19.37.045 GROUND WATER DISCHARGE AREAS—SEEPS AND SPRINGS

Lots which contain or are affected by springs, seeps or ground water discharge areas shall be evaluated to determine the relationship the discharge has on geologically hazardous areas, wetlands, and fish and wildlife habitat conservation areas. An analysis of such features shall be included in the application for development of the subject property. The city may allow modification of such features consistent with the provisions of this chapter related to critical areas, as applicable.

19.37.050 EXEMPTIONS AND EXCEPTIONS

Certain activities are exempt from the requirements of this chapter, while other activities which are regulated by this chapter may be granted specific exceptions or an administrative modification. This section lists the activities which are exempt from the regulations of this chapter, the exceptions which may be granted to the requirements of this chapter, and the administrative modifications which can be granted to the requirements of this chapter.

All activities or developments which are exempted, excepted, or granted modifications shall use reasonable methods to avoid and minimize potential impacts to critical areas and buffers, including use of any applicable best management practices. Such activities or developments which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable.

The burden of proof is on the applicant to provide sufficient evidence to the city the activity meets the precise description of the exemption or exception.

A. *Exemptions.* The following are exemptions to the provisions of this chapter due to having no environmental impact, being temporary in nature, or are an emergency; however, the exemptions listed in this section may not be exempted from other state or federal regulations or permit requirements. An exemption does not give permission to degrade a critical area or ignore risk from natural hazards. Any damage to, or alteration of, a critical area or an associated buffer shall be restored, rehabilitated, or mitigated at the expense of the property owner. Soil stabilization and erosion control shall be completed

immediately after vegetation removal. Unless otherwise specified below, other restoration or rehabilitation shall be completed within 60 days of the damage or alteration, unless otherwise approved by the planning director.

1. *Exempted Actions.*

a. Emergency actions, which are activities necessary to prevent an immediate threat to the public health, safety or welfare or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of the critical areas regulations, as verified by the city. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency with the least possible impact to the critical area and/or its buffer. Once the immediate threat has been addressed, any adverse impacts on critical areas shall be minimized and mitigated within one year of the end of the emergency.

b. Existing and ongoing agricultural activity occurring prior to and since January 13, 1990; provided, however, at such time as the property ceases to be used for agricultural activities and a development activity is proposed, the property shall be brought into compliance with the provisions of this chapter; and further provided, that existing ditches and drain tiles are not expanded in a manner that will drain wetlands in existence as of the date this chapter becomes effective. This exemption does not apply to filling or alteration of wetlands not in agricultural use as of January 13, 1990. The city encourages the use of best management practices or farm conservation plans to reduce impacts of agricultural practices on critical areas.

c. Normal and routine maintenance of legally constructed irrigation and drainage ditches; provided, that this exemption shall not apply to any ditches used by fish.

d. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds; provided, that such activities shall not involve the conversion of any wetland or stream not used for such purposes prior to and since January 13, 1990.

e. Normal and routine maintenance of entirely artificial structures or wetlands intentionally constructed by humans from upland areas for purposes of stormwater drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this chapter.

f. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility-related activities, and maintenance of public streets and public park facilities when the activity does not expand the footprint of the facility or encroach further into the critical area, does not impact a fish or wildlife habitat conservation area, and when undertaken pursuant to best management practices to minimize impacts to critical areas and their buffers:

(1) Normal, routine, and emergency maintenance or repair of existing, legally established public or private utility structures or rights-of-way, including vegetation management;

(2) Installation, construction, or modification in improved street rights-of-way and replacement, operation or alteration of the following facilities:

(A) Natural gas, cable communications, telephone facilities, water and sewer lines, pipes, mains, equipment or appurtenances;

(B) Electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less;

(C) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not alter the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be altered. Trenching is not allowed by this provision.

(3) Normal and routine maintenance or repair of public streets, state highways, and public park facilities, including vegetation management. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area, nor does it include construction of a maintenance road or the dumping of maintenance debris.

g. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the State Department of Natural Resources.

h. Minimal soil disturbance for site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities including educational research activities that do not result in altering the structure or functions of the critical area. Disturbed areas shall be immediately restored.

i. Conservation measures intended to preserve soil, water, vegetation, fish and other wildlife and their associated habitat that do not involve adversely impacting the structure or functions of the critical area.

j. Routine maintenance of existing, legally-established landscaping and fencing including removal of invasive vegetation, that does not involve grading, excavation or filling.

k. Modification to existing structures. Legally constructed structures and improvements in existence on January 13, 1990, that do not meet the buffer requirements of this chapter may be remodeled, reconstructed, or replaced; provided, that the new construction or related activity does not further alter or increase the impact to the critical area or buffer as a result of the proposed modification. For structures that are damaged or destroyed as a result of flood, fire or act of nature, restoration work shall be initiated by the applicant within one year of the date of damage or destruction, as

evidenced by issuance of a valid building permit. The work authorized by such permit must be completed within the term of the permits issued by the city, which includes any written extensions.

B. *Exceptions.* All exceptions must be approved by the city through the review process listed in EMC Title 15 prior to the exception applying. The following activities include exceptions to certain requirements of this chapter; however, unless otherwise noted the exceptions listed in this section still require compliance with the other requirements of this chapter, except as allowed by the exception. The exception may not be exempted from other state or federal regulations or permit requirements. Any damage to, or alteration of, a critical area or an associated buffer shall be restored, rehabilitated, or mitigated at the expense of the property owner.

1. New accessory structures up to two hundred square feet. Where structures, lawns and associated improvements have been legally established within a buffer area, new structures and additions to existing structures up to two hundred square feet may be permitted within the improved portion of the buffer as follows:

a. The two-hundred-square-foot limit shall include all associated improvements such as walkways or other impervious areas;

b. The new structure or addition shall be placed within the outer fifty percent of a legally altered critical area buffer;

c. The new structure or addition maintains a minimum setback of ten feet from the critical area;

d. A minimum of one square foot of legally altered buffer area is restored for every one square foot of new structures, lawns and associated improvements;

e. A critical area covenant is recorded;

f. A habitat assessment is completed as required by this chapter;

g. A fence and critical area signage are provided to identify and protect the newly established buffer area;

h. Only one such exception per site or property is allowed; and

i. A critical area report may be required.

2. Expansion. For a legally established structure, the expansion or replacement, including any expansion of a legally established accessory structure allowed does not increase the footprint of the structure and all other structures by more than one thousand square feet, provided the following:

a. The location of the expansion has the least adverse impact on the critical area;

b. To the maximum extent practical, the expansion or replacement is not located closer to the critical area and is located on the side of the structure opposite the critical area;

c. Mitigation for project impacts is provided; and

d. The structure was not established as the result of variance, buffer averaging, buffer reduction, or reasonable use exception; Expansions and additions shall not further encroach into a critical area or the portion of the required buffer between the critical area and existing improvements. Expansions within the critical area or buffer shall be limited to a maximum of one thousand square feet of impervious surface. To the extent feasible based on site-specific conditions, expansions shall result in no additional hydrologic impacts from stormwater runoff by using techniques such as low impact development. Remodeling, reconstruction, and expansions shall be subject to all other requirements of the zoning code.

3. *Wetland Exception.* Wetlands that meet the following criteria are not subject to the avoidance and minimization requirements of the mitigation sequence of EMC 19.37.100 in accordance with the following provisions, and they may be filled if the impacts are fully mitigated based on the remaining actions in the mitigation sequence. Impacts should be mitigated through the purchase of credits from a mitigation bank or in-lieu fee program, if available, consistent with the terms and conditions of the bank or program. In order to verify whether the following criteria are met, it is essential that a critical area report for wetlands meeting the requirements of this chapter be submitted. It is the applicant's responsibility to provide a determination by a qualified professional whether the wetland is a non-federally regulated wetland.

a. All category IV, non-federally regulated wetlands less than four thousand square feet that meet all of the following criteria:

(1) Are not associated with riparian areas or their buffers;

(2) Are not associated with shorelines of the state or their associated buffers;

(3) Are not part of a wetland mosaic;

(4) Do not score six or more points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 Update, Version 2.0 (Ecology Publication No. 23-06-009, or as revised and approved by Ecology); and

(5) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, and do not contain federally listed species or their critical habitat.

b. Category IV, non-federally regulated wetlands less than one thousand square feet that meet all of the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter.

4. The following actions may be required to provide a habitat assessment or biological assessment under EMC 19.37.520, FWHCAS – Critical Area Report Additional Requirements. If the application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements, a development proposal by a public agency or a utility to construct utility facilities for the conveyance of water, sewage, storm drainage, electricity, natural gas, cable or telecommunications, or the construction of streets and highways, the agency or utility may request an exception. Such a request shall be reviewed using the review process described in EMC Title 15, Local Project Review Procedures. The city may approve, or approve with modifications, such a request only when the following findings are made:

a. The application of this chapter would prohibit or unreasonably restrict the ability to provide necessary utilities or infrastructure improvements or maintenance;

b. There is no other reasonable alternative to the proposed development with less impact on the critical area;

c. The proposal mitigates impacts on the critical areas;

d. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and

e. The proposal is consistent with other applicable regulations and standards.

5. *Docks.* This section does not apply to areas under jurisdiction of the shoreline master program.

a. Repair and maintenance of an existing legally established dock are permitted; provided, that all of the following criteria are met:

(1) There is no expansion in overwater coverage;

(2) There is no increase in the size and number of pilings;

(3) There is no use of toxic materials, such as creosote, CCA and other treated wood products;

(4) There is no new spanning of water between three and thirteen feet deep; and

(5) There is no new increase in the use of materials creating shade.

b. New docks are permitted subject to compliance with any WDFW HPA or U.S. Army Corps of Engineers permit conditions. Piers and docks shall be located, designed and constructed so as to cause minimum interference with public use of the water surface and shoreline; to mitigate the impacts to ecological function and critical areas; to avoid or minimize impacts to views; and to cause no undue harm to adjacent properties.

c. New docks shall be a maximum of four feet in width and a maximum walkway width of four feet. Overwater surfaces shall be constructed of unobstructed grating which provides at least fifty percent of open surface area. Piles, floats or other parts of the structure that come in direct contact with the water shall be approved by applicable federal and state agencies for use in water and shall not be treated or coated with biocides such as paint or pentachlorophenol. Use of arsenate compounds or creosote treated members is prohibited.

d. Only one dock shall be permitted for all lots in any short subdivision or subdivision that occurs after September 1, 2000. Such dock shall be shared between all lots in the short subdivision or subdivision.

e. Covered overwater moorage, either fixed or floating, shall be prohibited.

f. No dock may be located within fifteen feet of an interior lot line, unless shared with the owner of the adjacent lot, in which case no setback is required.

g. No residential lot shall have more than one dock.

h. No dock shall exceed four feet in width, twenty-five feet in length or five feet in height above the ordinary high water mark on the landward side.

6. *Reasonable Use Exception.* This section does not apply to areas within jurisdiction of the shoreline master program.

a. Nothing in this chapter is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this chapter as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

(1) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area; and

(2) The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

(3) Any alterations permitted subject to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property; and

(4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after January 13, 1990; and

(5) The proposal mitigates the impacts on the critical areas and buffers to the maximum extent possible.

b. *Reasonable Use Decision Process.* Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the submittal shall

include the following information which will be used to evaluate the criteria for reasonable use exception:

(1) The location, size, and description of the areas of the lot which are either critical areas, required buffers, or setbacks required by this chapter;

(2) A description of the location and area of the lot which is within setbacks required by other standards of the zoning code;

(3) An analysis of the minimum development necessary to achieve "reasonable economic use" of the lot, including a narrative which includes a factual basis for this determination;

(4) An analysis of the impact that the development described in this section would have on the critical areas and buffer functions, including an analysis of impacts on fish and wildlife resources;

(5) An analysis of whether any other reasonable use with less impact on the critical areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the critical areas and buffers. The phasing analysis shall address whether pre-project mitigation of impacts to buffers is feasible to reduce impacts on critical areas. The analysis shall also address stormwater impacts and mitigation required by the city's stormwater management regulations;

(6) A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the critical areas;

(7) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

(8) A description of any modifications needed for the required front, side and rear setbacks, building height, and landscape widths to provide for a reasonable use while providing protection to the critical areas;

(9) A description of the proposed enhancement/restoration of the critical area and buffer necessary to result in no net loss of function to the maximum extent feasible;

(10) Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

c. *Reasonable Use Administrative Modification.* If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

(1) If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while providing greater protection to the critical areas than if the standard were met;

(2) If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the critical areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot. Where buffer reduction is permitted, enhancement/restoration of the buffer and/or critical area must be provided so that mitigation results in no net loss of critical area and buffer functions to the maximum extent feasible; or

(3) If a reasonable economic use of a lot cannot exist by means of either subsection (B)(6)(c)(1) or (2) of this section, then the planning director is authorized, using the review process described in EMC Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection (B)(6)(c)(1) or (2) of this section, or in lieu of them. For purposes of this section, “transfer of development rights (TDR)” means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

(A) *Neighborhood Residential Zones.* The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to a neighborhood residential or neighborhood residential-constrained zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

(i) The number of dwelling units which the planning director determines to be the minimum necessary to allow for reasonable economic use of the restricted property; or

(ii) The number of dwelling units that would be allowed on the receiving site with an assumed twenty percent increase in lot size. In approving a transfer of development rights to the

receiving site in a Neighborhood Residential zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. The director shall have the authority to reduce the required lot width and depth by not more than twenty percent. All dwelling units on such lots shall be one-unit dwellings.

(B) *Urban Residential Zones.* The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

(C) *Mixed-Use and Industrial Zones.* The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

d. All other requirements of this chapter shall apply to the subject property, including but not limited to submittal of mitigation plans, monitoring reports, and assurance devices, installation of fencing and signs, and recording of protective covenants.

19.37.060 PERMITTED AND ALLOWED USES AND ACTIVITIES

A. Uses permitted on lots containing or adjoining critical areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this chapter and other city, state, and federal regulations. The permitted and allowed uses listed in this section may not be exempted from other state or federal regulations or permit requirements and may not degrade a critical area or ignore risk from natural hazards. Any damage to, or alteration of, a critical area or an associated buffer of the activity shall be restored, rehabilitated, or mitigated at the expense of the property owner. Soil stabilization and erosion control shall be completed immediately after vegetation removal. Unless otherwise specified below, other restoration or rehabilitation shall be completed within 60 days of the damage or alteration, unless otherwise approved by the planning director.

B. The following uses/activities are permitted in critical areas and their buffers subject to the review process listed in EMC Title 15:

1. Minor utility construction projects. The placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility that disturbs less than one hundred square feet of critical area and buffer, provided such projects are constructed using best management practices to avoid and minimize impacts to critical areas and buffers, subject to the following conditions:

a. The activity does not impact a Type F stream or a category I wetland and complies with other provisions of this chapter; and

b. The activity is designed and implemented in accordance with mitigation sequencing per EMC 19.37.100 to achieve no net loss of critical area functions and values.

2. Buffer management, as defined in this title, when approved by the planning director and all agencies with jurisdiction.

3. Select vegetation removal activities. The following vegetation removal activities are permitted:

a. *Pruning.* Pruning is limited to trimming, limbing, thinning, windowing, and skirting in a manner consistent with this subsection.

(1) A permit is required to prune trees in critical areas. Prior to pruning, trimming, limbing, thinning, windowing, and/or skirting:

(A) The applicant shall submit a pruning report by a certified arborist and have all work be performed under the direction of a certified arborist.

(B) The applicant, in lieu of the above and an application fee as determined by the planning director, shall:

(i) Submit a plan showing the location of the proposed work, using aerial photos or a site plan that accurately depicts the location of trees to be pruned;

(ii) Submit photos of the trees to be pruned, a description of the portions of the tree to be removed by pruning, and documentation that the trees are located on property owned by the applicant;

(iii) Sign a declaration stating that they have read and understand, and will comply with, the applicable city regulations;

(iv) Submit photos of the trees that were pruned after the work is completed.

(C) The city shall review and issue the tree pruning permit upon submittal of a complete application that demonstrates the proposal complies with all applicable requirements.

(D) The city shall conduct a site inspection upon completion of the work or any time thereafter if the work was done without a certified arborist to determine that the work has been conducted in accordance with city regulations.

(2) Pruning must adhere to the ANSI A300 Tree Care Standards

(3) Pruning shall not result in the removal of more than thirty-three percent of the tree's crown.

(4) Pruning shall not include topping of trees unless underneath power lines.

(5) Pruning activity shall not result in any soils disturbance on the site.

(6) A tree that is an active nest site for a species of local or state importance or provides critical habitat such as an eagle perch, or other listed threatened or endangered species, shall not be pruned.

(7) Topping trees or pruning trees in excess of thirty-three percent is considered a nonhazardous tree removal activity and therefore must comply with subsection B.3.c of this section.

(8) Once a tree is permitted to be pruned, it may be continued to be pruned but may not be pruned beyond thirty-three percent of the tree's original crown.

b. *Hazard tree removal with replanting.* The removal of hazard trees from critical areas and required buffers subject to the replanting of native trees to maintain critical area and buffer functions. Hazard trees are those trees that pose a threat to public safety, or pose an imminent risk of damage to private property.

(1) The director may determine that a tree or trees pose an apparent hazard or threat to public safety and approve their removal. The director may require, at the owner's cost, a tree risk assessment and recommendation from a certified arborist, registered landscape architect or professional forester that:

i. Identifies the trees proposed to be removed
ii. Concludes the tree condition constitutes a hazard to life or property
iii. Assesses the feasibility of snag retention
iv. Evaluates if trees to be removed provides priority habitat
v. Provides location and species of replacement trees

(2) Where hazards can be eliminated without complete removal of the tree, the director may require that a wildlife snag remain in the critical area or required buffer.

(3) Where tree removal is necessary, the landowner shall provide replacement trees as recommended by the assessment or at a ratio of two native trees for every tree removed. Trees shall be placed at a location approved by the director to avoid future tree hazards and in accordance with an approved restoration plan within one year of removal.

(4) If a tree to be removed provides priority habitat, including eagle nests, a qualified professional shall be consulted to determine timing and methods of removal that will minimize impacts. The qualified professional's report shall be

circulated to agencies with expertise for review and comment prior to approval by the director.

(5) If a tree to be removed is located within a geologically hazardous area, the planning director may require submittal of a geotechnical report documenting the impact on the property, including recommendations for replanting and other measures to avoid adverse impacts to slope stability.

(6) Unless otherwise provided, or as a necessary part of an approved alteration, mitigation, or buffer management plan, removal of any vegetation or woody debris from a wildlife habitat conservation area or wetland, or required stream or wetland buffer, shall be prohibited.

(7) The city may require that a hazard tree assessment or tree risk assessment be completed, and that hazard trees be removed from buffers, and trees replanted in accordance with the requirements of this chapter prior to final approvals for a development proposal.

c. *Nonhazardous tree removal with replanting.* Except as allowed under subsection B.2 of this section, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow up to a maximum of ten percent of all nonhazardous trees within the outer half of a critical area buffer to be removed. Removal of nonhazardous trees must comply with the following requirements:

(1) Proposals to remove nonhazardous trees shall include a planting plan prepared by a qualified professional biologist, arborist, or forester unless waived by the planning director. The plan must show the number, size, and type of plants to be planted and where the plants will be located. The plants should be placed in an area within the buffer that will be most beneficial to the stream or wetland and an area where future cutting will not be necessary. A minimum of three, three- to five-gallon native trees of different varieties must be planted for every tree to be removed unless it would create an overcrowded situation in which case the planning director can reduce this ratio or allow shrubs to be planted as an alternative. On geologically hazardous slopes, the tree size shall be a minimum of two gallons or if bareroot an equivalent size. The planning director shall have discretion to reduce the number of trees to be cut if the proposed plan fails to replace over the long term the loss of functions and values of the buffer that may result from the cutting of trees. A tree inventory is required with the tree type and size shown on a site plan unless waived by the planning director. Only trees greater than a six-inch diameter at breast height within the outer half of the critical area buffer can be counted unless the trees to be removed are less than six-inch diameter at breast height.

(2) Tree removal is limited to once every five years.

(3) A tree that is an active nest site for a species of local importance including bald eagles, or provides critical habitat, shall not be cut.

(4) If the buffer's edge has not been delineated and cannot be determined by the city, a wetland or stream buffer delineation will be required.

(5) If the trees to be removed are on a geologically hazardous slope, a geological assessment letter or geotechnical report is required unless waived by the planning director. A geologically hazardous covenant must be recorded prior to tree cutting.

(6) Tree stumps must not be removed and all wood debris must be left within the buffer unless otherwise recommended by a biologist or geologist. A minimum of twenty-five percent of cut trees shall be left as snags approximately twenty feet tall unless within striking distance of structures, yards, or trails.

(7) Where the stump of a big-leaf maple or other tree with a similar growth habit that has been approved for removal remains in the buffer, branches that sprout from the stump may be removed annually.

(8) Prior to cutting, all trees to be cut must be marked, all required replacement plants must be on the property ready to be planted, and a critical areas covenant must be recorded. The replacement plants must be planted prior or immediately after the trees have been cut and placed in an area within the buffer that will be most beneficial to the stream or wetland.

(9) A survey may be required if trees are to be removed near any lot line.

(10) *Forest Practices.* Where applicable, applications for tree removal shall also include a city of Everett timber harvest application and include an estimate of the number of board feet to be cut.

(11) Planting of additional trees beyond what is required in this section or buffer enhancement may be required if trees have been cut without planning director approval.

d. *Weed Removal.* The removal of Class A, B, and C noxious weeds on the Washington State Noxious Weed List in conjunction with a mitigation plan or buffer management plan approved by the director. Unless otherwise specified in an approved mitigation or buffer management plan, weed removal is limited to hand weeding with light equipment that will not compact soil. Plants that are on the Washington State Noxious Weed Control Board list of noxious weeds should be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species to achieve natural densities is required in conjunction with removal of invasive plants.

4. *Public and private pedestrian paths and trails.* Public and private pedestrian trails, including interpretive signage, overlooks, and benches, may be permitted subject to the following criteria and designed in accordance with an approved critical area report:

a. The trail or path shall not be permitted when critical area functions will be substantially degraded, shall be designed to minimize impacts to the critical area and its buffer.

b. The trail or path shall be located on the outer twenty-five percent of the buffer, except for areas which provide for public viewpoints of the critical area or educational opportunities, and which are designed to minimize the footprint of the trail/path within the critical area or its buffer.

c. Stream crossings shall avoid adverse impacts to water quality or flow.

d. The width of trails shall be the minimum necessary. Critical area and buffer widths shall be increased, where possible, equal to the width of the trail corridor including disturbed areas.

e. The proposal must comply with the report requirements of this chapter.

f. The trail surface shall meet all other requirements including all applicable water quality standards. The trails should be one hundred percent porous to the maximum extent feasible. Raised boardwalks with non-treated pilings are allowed.

g. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

h. Public and quasi-public trails shall include interpretive signs identifying the critical area and buffer specific to the site.

5. *Stormwater facilities.* Stormwater facilities and conveyance systems may be allowed in stream and wetland buffers, provided no other location is feasible, the location of such facilities will not degrade the functions or values of the critical area, and subject to the following criteria:

a. Stormwater ponds and vaults are not permitted in wetland or stream buffers.

b. Stormwater low-impact development and vegetative flow paths from level spreaders may be allowed in the outer 25 percent of the stream and wetland buffers only if the applicant demonstrates that no feasible alternative on-site location exists and the project would not adversely affect the stream flow or the function or values of the wetland, stream, and associated buffer. The following may be required:

i. Vegetated stormwater Low Impact Development Best Management Practices such as dispersion, infiltration, or constructed wetlands planted with appropriate native vegetation and trees are allowed without buffer averaging requirements;

ii. All requirements of the City’s currently adopted Stormwater Management Manual are met;

iii. The facilities are not located in a fish and wildlife habitat conservation area, wetland, or associated buffer used by species listed as endangered or threatened by the State or Federal government or containing critical or outstanding actual habitat of those species, and considers alternative construction timing to minimize impacts in areas with heron rookeries or raptor nesting trees; and

iv. Stormwater Low Impact Development Best Management Practices construction and maintenance protects the stream and stream buffer and is aligned to avoid cutting trees greater than 12 inches in diameter at breast height, when practical

c. For Type Np and Ns streams and category III, and IV wetlands, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function and would not substantially alter stream or wetland hydrology. Additional analysis demonstrating a proposed significant increase in wetland and/or stream function as measured by the Western Washington Wetland Rating System is required to be prepared by a qualified professional and submitted for review prior to authorization.

19.37.070 GENERAL PROVISIONS FOR NONCONFORMING STRUCTURES AND IMPROVEMENTS IN CRITICAL AREAS AND BUFFERS

The following establishes provisions for nonconforming structures and improvements located within critical areas or their buffers within Everett's jurisdiction. In a critical areas context, nonconforming structures and improvements are those legally established structures and improvements which met all local, state, and federal regulations in effect at the time of construction but would otherwise require additional critical area review and approval under current requirements.

A. *General Provisions*

1. Nonconforming structures and improvements may remain, be maintained, repaired, and replaced in accordance with this chapter.

2. Nonconforming structures and improvements may be expanded only as permitted by EMC 19.37.050.

3. Lawns and nonnative vegetation may be maintained, but not expanded, within buffers or critical areas.

4. All activities or developments using the provisions of this section shall demonstrate how the proposal follows mitigation sequencing in EMC 19.37.100, and shall describe the proposed use of any applicable best management practices.

5. Except for upper floor expansions not increasing a development footprint, the provisions of subsections (C) and (D) of this section may each be used one time for the subject property and may be used in combination. Any development application utilizing these provisions shall clearly document how the proposal meets these provisions.

B. Maintenance and Repair of Nonconforming Structures

1. A nonconforming structure may be maintained, repaired, or internally modified provided that the work does not increase the structure footprint or impervious area.

C. Reconstruction of Existing Nonconforming Structures

1. An existing nonconforming structure may be reconstructed as repair, reconstruction, or due to destruction or damage to any extent by fire or other casualty not intentionally caused by the owner; provided, that: there is no expansion of the existing footprint or increase of impervious area, including decks, patios or other improvements; there is no expansion of exterior walls; there is no increase in the nonconformity; and reconstruction is built on the existing foundation.

2. For a nonconforming structure destroyed or damaged to any extent by fire or other casualty not intentionally caused by the owner, a structure may be reconstructed on the existing foundation, or a new foundation may be built in the same location or further from the critical area.

3. In case of casualty damage or destruction, the following is required:

a. A complete building permit application shall be properly filed within one (1) year of such fire or other casualty or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and

b. Rebuilding of the nonconforming structure shall be substantially complete within four (4) years of the date of the damage or the nonconformance shall be considered to be terminated and shall not be replaced in its prior nonconforming location; and

c. Documentation showing the date of the damage, the location, and dimensions of the damaged structure, and cause of the damage shall be submitted to the planning department for review and confirmation.

d. If a nonconforming structure which has no permanent foundation is destroyed and the foundation's location cannot be verified by the planning department, then any new construction shall comply with the requirements of this chapter, excluding this section.

D. Expansion of Nonconforming Structures

1. An expansion of a nonconforming structure that increases the footprint, impervious area, or size of the structure, including new upper floors, is permitted if the expansion or any other change to the structure is outside of the critical area, critical area buffer, and any associated setbacks.

2. Additional upper floors may be added to a nonconforming structure above the ground floor if they do not encroach into the critical area, its buffer, or any associated setback any further than the exterior walls of the existing nonconforming structure.

3. Nonconforming structures and improvements may be expanded within critical areas or buffers only as permitted by EMC 19.37.050.

ARTICLE I. CRITICAL AREA REVIEW PROCEDURES

19.37.100 MITIGATION SEQUENCING

A. To realize critical area preservation goals, the city will require applicants demonstrate application of mitigation sequencing in accordance with WAC 197-11-768:

1. Avoid impact altogether by not taking a certain action or parts of an action;

2. Minimize impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impact;

3. Rectify the impact by repairing, rehabilitating or restoring the affected critical areas;

4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the actions;

5. Compensate for the impact by replacing, enhancing, or providing substitute wetland areas and environments;

6. Monitor the impact and take appropriate corrective measures.

19.37.110 CRITICAL AREA REPORTS—GENERAL

A. *Supporting Information.* All land uses and developments proposed on or adjacent to critical areas and their buffers shall include studies which describe the environmental conditions of the site. No activity, including clearing, filling or grading, shall be permitted until the information required by this section is reviewed and approved by the city. Such studies shall be prepared by a qualified professional, who shall prepare the studies in accordance with the requirements of this chapter to the satisfaction of the planning department. The city may retain consultants at the applicant's expense to assist the review of studies and/or conduct site evaluations which are outside the range of staff expertise. The planning director is authorized to develop and maintain a detailed list of required study contents.

B. *When a Critical Area Report Is Required.* A critical area report is required when a proposed development is located within three hundred feet of a documented or suspected critical area (or two hundred feet from a potential geologically hazardous area). The city may waive the requirement for a critical area report in the following circumstances on a case-by-case basis:

1. The critical area was previously documented by a study and the city has determined the proposed development would not impact the critical area(s) or associated buffers; or

2. There is existing legally established development located between the critical area and the proposed development site and any required buffers on the site would be ineffective.

Table 37.1: Critical Area Reports—Summary

Document/Report Type	When Required	Notes:
Geological Assessment Letter	Potential geologically hazardous area exists on or within 200 feet of the proposed project area	Reconnaissance study; see EMC 19.37.220

Document/Report Type	When Required	Notes:
Geological Report	An active geologically hazardous area exists on or within 200 feet of the proposed project area	Detailed study; see EMC 19.37.220
Critical Area Delineation Report	Wetland, stream or lake on site or within 300 feet	Identifies and maps critical areas and buffers
Wetland or Stream Mitigation Plan	Alteration or fill of wetlands, streams or buffers	Includes monitoring and contingency elements
Biological Assessment for Threatened or Endangered Species	Development within "protected area" or "special flood hazard area"	Per biological opinion by NMFS for development within 100-year floodplain. See EMC 19.37.520
Habitat Assessment	Potential impacts on regulated threatened/endangered species	Can apply to either terrestrial or aquatic habitat. See EMC 19.37.520.
Habitat Management Plan	Provided with a habitat assessment when a development is proposed on or adjacent to a "habitat of primary association" for fish and wildlife habitat conservation area	See EMC 19.37.520
Monitoring Report	After completion of enhancement or mitigation work within critical areas and/or buffers	Provided post-development

19.37.120 CRITICAL AREA REPORTS—PROFESSIONAL QUALIFICATIONS AND GENERAL REPORT CONTENT

A. *General Requirements for All Critical Area Reports.*

1. *Preparation by a Qualified Professional.* A critical area report shall be prepared by a qualified professional . The qualifications of the qualified professional who prepared the report shall be included in the report. The accuracy of the report shall be certified by the professional who is the principal author of the report. The director shall have the authority to hire an outside consultant at the applicant's expense to review plans when the city has concerns about the accuracy or completeness of the report or plan.

2. *Report Content.* The written report (and the accompanying plan sheets and map figures) shall contain all of the following information, at a minimum:

a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the critical area report;

b. A description of the proposal and proposal location including tax parcel numbers of the subject property;

c. Documentation of any fieldwork performed on the site, including delineation worksheets, figures, function assessments, soil logs, baseline hydrologic data, date and time of site evaluation, etc.;

d. Identification, characterization, and if applicable wetland rating of all critical areas, water bodies, shorelines, and buffers on or within 300 feet of the proposed project area, including a description of all methodology with references;

e. A statement specifying the accuracy of the report and all assumptions made and relied upon;

f. A description of the proposed actions including an estimation of acreages of impacts to critical areas and buffers based on the field delineation;

g. An assessment of the probable direct, indirect, and cumulative impacts to the critical areas and buffers resulting from the proposed development, including short-term and long-term impacts to critical area functions and values within and adjacent to the site;

h. A narrative and supporting information describing how the applicable steps of the mitigation sequence of EMC 19.37.100 are proposed to be applied;

i. A description of measures taken to protect and enhance existing habitat connections with other natural areas;

j. Scaled drawings of all critical areas and buffers within 300 feet of the proposal, areas of impact to critical areas and buffers, grading and clearing limits, and other project and site-specific information as determined necessary by the planning director;

k. Dimensions of all buffers and distances between critical areas and existing and proposed structures and lot lines.

19.37.130 CRITICAL AREA REPORTS—ALTERNATIVE BEST AVAILABLE SCIENCE ANALYSIS

The planning director may, using the review process described in EMC Title 15, Local Project Review Procedures, authorize a modification to the standards in this chapter as follows:

A. An applicant must submit a critical area study by a qualified professional that documents that the proposed development design/standards will result in a net improvement of the functions of the critical area over that which would be obtained by applying the standard prescriptive measures contained in this chapter. The study must address best available science as it relates to the critical area functions.

B. The study must be circulated to appropriate state and federal resource agencies for review and comment opportunity prior to planning director authorization.

C. The development design/standards may include, but are not necessarily limited to, measures prescribed in an approved watershed conservation plan or other similar conservation plan that addresses critical areas protection consistent with this section.

D. The proposed design/standards must not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located.

19.37.140 SETBACKS, FENCING, SIGNS, AND OTHER PROTECTIVE MEASURES

A. *General Requirements.* Storage of building materials, junk and other items is not permitted within critical areas or buffers. All construction staging areas must be shown on approved plans and be located outside of critical areas and buffers.

B. *Setbacks from Buffers.* To maintain the integrity of the buffer, principal buildings shall be set back a minimum of ten feet from the edges of all critical area buffer boundaries. All other structures and improvements shall maintain a setback of five feet from the edge of the buffer.

C. *Fencing and Other Protection Mechanisms.* Except for utility and road projects, the city shall require that any development proposed on a lot which contains or adjoins a critical area provide a fence or other structural protection along the outer edge of a buffer to minimize encroachment and disturbance. Fencing shall be split-rail or an alternative approved by the planning director. Fencing must be installed in a manner that allows continuous wildlife movement.

D. *Signs.* The city may require the applicant to provide informational signs in conspicuous locations approximately 50 feet apart on a fence marking the buffer to identify the importance of maintaining the critical area and buffer in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 19.36.

E. *Protection of Significant Trees within Buffers (Evergreens at Least Eight-Inch Diameter at Breast Height).* If ~~Heritage Trees and~~ evergreen trees at least eight-inch diameter at breast height are identified on the outer edge of the buffer such that their drip line extends beyond the buffer edge, the following tree protection requirements must be followed:

1. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the drip line of the tree(s), unless otherwise approved by the department.

2. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.

3. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.

4. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.

5. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.

6. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.

7. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

19.37.150 CONSTRUCTION PLAN REVIEW

A. *Construction Plans.* Construction plans necessary to implement requirements of the detailed mitigation plan shall be provided prior to issuance of construction permits. Plans shall include the proposed construction sequencing and timing; surface and subsurface hydrologic conditions, including proposed hydrologic regimes for compensatory mitigation areas; grading and excavation details, erosion and sediment control measures; a planting plan specifying plant species, quantities, location, size, spacing, density, proper placement, fertilization standards, and provisions for temporary irrigation systems.

B. The planning director may require construction monitoring by a qualified professional during alteration activities within or adjacent to critical areas or buffers to ensure approved design recommendations are implemented. When such services are deemed necessary by the planning director, they shall be at the applicant's expense.

19.37.160 ASSURANCE DEVICES

The city shall require performance or maintenance assurance devices in accordance with Chapter 19.40 to ensure compliance with this chapter and adequate protection and maintenance of critical areas and buffers.

19.37.170 TITLE NOTIFICATION

A notice on real property title is required as a condition of permit issuance or project approval when a permit or development application is submitted for development on any property containing critical areas or buffers. The purpose is to inform subsequent purchasers of real property of their existence.

A. *Critical Area Covenants.* Except as provided for below, the city shall require that all features classified as critical areas by this chapter and their buffers, including fish and wildlife habitat conservation areas and geologically hazardous areas, be placed in critical area protective covenants. Covenants shall not be required for:

1. Utility and road projects in public rights-of-way.

2. Utility and road projects on private easements where the proponent does not own the land.

3. Any development within the special flood hazard area will require a notice on title that the property contains land within the riparian habitat zone and/or special flood hazard area.

B. *Critical Area Tracts.* The city may require that any area classified as a critical area and its buffer be placed in a permanent separate tract, rather than included in the protective covenant. A tract shall be required when the proposal includes a short subdivision or binding site plan. Such a tract shall remain in the same ownership as the parcel it was segregated from; placed into undivided common ownership of all lots within a proposed subdivision, short subdivision, or binding site plan; or dedicated to a public agency which is willing to accept the tract for long-term management of the protected resource.

C. *Notice on Title.* The owner of any property on which a development proposal is submitted shall file with the Snohomish County auditor a notice approved by the planning department, which shall provide notice in the public record of the presence of the critical area covenant or tract, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the city may approve any development proposal on the site. The notice shall run with the land, and failure to provide such notice to any purchaser prior to transferring any interest in the property is a violation of this chapter.

19.37.180 UNAUTHORIZED CRITICAL AREA ALTERATIONS

A. *Unauthorized Alterations.*

1. Critical areas and associated buffers regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title; provided, that all critical areas and buffers which were illegally altered shall be considered critical areas and buffers and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains a critical area or buffer that has been illegally altered shall be reviewed by the planning director using the review process described in EMC Title 15, Local Project Review Procedures.

2. . Any illegal alteration of a critical area or buffer which is not proposed for development as allowed by this chapter shall be restored to a condition which is equivalent or superior to its prior natural condition to the extent that such condition can be determined.

3. Legal alterations are those alterations to critical areas and buffers that were in conducted in accordance with all local, state, and federal regulations in effect at the time of the alteration.

19.37.190 ENFORCEMENT—RESTORATION PLANS

A. Any person, firm, corporation, or association or any agent thereof who violates any provision of this chapter shall be subject to the enforcement provisions of Chapter 1.20 EMC and this title.

B. *Restoration of Impacts Required.* Any unauthorized impacts on a critical area feature or buffer will require restoration of the affected area to an equivalent or improved condition prior to the violation occurring. A restoration plan must be consistent with the requirements of this chapter and a public works permit may be required by the city. If an equivalent or improved condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the portion of the critical area that cannot be restored, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the evaluation methods of the International Society of Arboriculture. In addition to the authority of the city's code enforcement officer to impose penalties pursuant to Chapter 1.20 EMC, the code enforcement officer may impose the fine described in this section as applicable.

C. Restoration plans shall include, but not be limited to, the replacement of all improperly removed vegetation with approved species such that the biological and habitat values will be replaced to an equivalent or improved condition, improper fill removed and slope stabilized. Studies by a qualified professional shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.

D. Restoration shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored ground cover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the city.

E. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this chapter until the property is fully restored in compliance with this chapter and all penalties are paid.

F. Notwithstanding the other provisions provided in this chapter, anything done contrary to the provisions of this chapter or the failure to comply with the provisions of this chapter is declared to be a public nuisance.

ARTICLE II. GEOLOGICALLY HAZARDOUS AREAS

19.37.200 GEOLOGICALLY HAZARDOUS AREAS – DESCRIPTION AND PURPOSE

A. In accordance with WAC 365-190-120, geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, tsunami, or other geological events. They pose a threat to the health and safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

B. The purposes of geologic hazard area regulations is to avoid and minimize potential impacts to life and property from geologic hazards, conserve soil resources, avoid and minimize impacts of erosion and landslide hazards on wetlands and important wildlife habitats and species not caused by natural geologic processes, and minimize damage to property and structures due to landslides, seismic hazards, or other naturally occurring events. This purpose shall be accomplished through appropriate levels of study and analysis, application of sound engineering principles, and regulation or limitation of land uses, including maintenance of existing vegetation, regulation of clearing and grading activities, and control of stormwater. Elimination of all risk from geologically hazardous areas is not feasible to achieve, but the purpose of this article is to reduce this risk to acceptable levels.

19.37.210 GEOLOGICALLY HAZARDOUS AREAS – DESIGNATION AND MAPPING

A. *Designation.* The following geologically hazardous areas shall not be altered except as otherwise provided by this chapter:

1. Landslide hazard areas:

    a. Those areas defined as high and very high/severe risk of landslide hazard in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science:

        (1) Very high/severe: slopes greater than fifteen percent in the Qtb, Qw, and Qls geologic units; and slopes greater than fifteen percent with uncontrolled fill.

        (2) High: slopes greater than forty percent in all other geologic units (not Qtb, Qw, and Qls or uncontrolled fill).

b. Those areas defined as medium risk of landslide hazard in the Dames and Moore Methodology for Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science, when combined with springs or seeps, immature vegetation, and/or no vegetation:

(1) Slopes less than fifteen percent for Qtb, Qw, and Qls geologic units and uncontrolled fill.

(2) Slopes of twenty-five percent to forty percent in all other geologic units.

c. Those areas mapped by the Washington Geological Survey as identified in " Landslide inventory of portions of Snohomish County, Washington: Washington Geological Survey Report of Investigations" (Mickelson, et al., 2022) and per landslide maps maintained by Washington Department of Natural Resources.

d. Any area with all three of the following characteristics:

(1) Slopes greater than fifteen percent; and

(2) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

(3) Springs, ground water seepage, or saturated soils.

e. Any area which has shown movement during the Holocene epoch (from ten thousand years ago to the present) or which is underlain or covered by mass wastage debris of that epoch.

f. Any area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by wave action.

g. Areas of historic failures, including areas of unstable, old and recent landslides or landslide debris within a head scarp, and areas exhibiting geomorphological features indicative of past slope failure, such as hummocky ground, slumps, earthflows, mudflows, etc.

h. Any area with a slope of forty percent or steeper and with a vertical relief of fifteen or more feet, except those manmade slopes created under the design and inspection of a geotechnical professional, or slopes composed of consolidated rock.

i. Areas that are at risk of landslide due to high seismic hazard.

j. Areas that are at risk of landslides or mass movement due to severe erosion hazards.

2. Seismic/liquefaction hazard areas:

a. Those areas mapped as seismic/liquefaction hazards per the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous

Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science.

b. Those areas mapped as high and moderate to high liquefaction susceptibility on the Liquefaction Susceptibility Map of Snohomish County, Washington, Washington State Department of Natural Resources, Palmer, Stephen, et al., September, 2004.

3. Erosion hazard areas:

a. Those areas defined as high and very high/severe risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science:

(1) High erosion hazard areas include slopes of twenty-five to forty percent in Qva and Qal geologic units; and slopes of greater than forty percent in other (not Qva or Qal) geologic units.

(2) Very high/severe erosion hazard areas include slopes of greater than forty percent in Qva and Qal geologic units.

b. Those areas defined as medium risk of erosion in the Dames and Moore Methodology for the Inventory, Classification and Designation of Geologically Hazardous Areas, City of Everett, Washington: July 1, 1991, or as revised through best available science, when they contain debris and mud flows, gullying or rifling, immature vegetation, or no vegetation:

(1) Slopes of twenty-five to forty percent in other (not Qva or Qal) geologic units.

4. Tsunami hazard areas:

a. Tsunami hazard areas include coastal areas and shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of coastal wave action generated by seismic events or other geologic events. Suspected tsunami hazard areas are indicated on the Tsunami Hazard Areas maps maintained by the Washington Department of Natural Resources.

5. Other areas which the city has reason to believe are geologically hazardous.

B. *Mapping.* The approximate location and extent of potential geologically hazardous areas are shown on maps maintained by the City of Everett and the Washington State Department of Natural Resources, as referenced in the designation descriptions, above. These maps are meant to serve as a guide for applicants, owners, and plan reviewers. However, they do not provide a conclusive ~~of~~ or definitive indication of geologically hazardous area presence or extent. This article does not imply that land outside mapped geologically hazardous areas or uses permitted within such areas will be without risk. This chapter shall not create liability on the part of the City of Everett or any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

19.37.220 GEOLOGICALLY HAZARDOUS AREAS – CRITICAL AREA REPORT ADDITIONAL REQUIREMENTS

A. *Minimum Standards for Geological Assessments.* A geological assessment is a site investigation process to evaluate the on-site geology affecting a subject property and contiguous properties and the extent to which geological factors may be impacted by the proposed development activity. In addition to the general critical area report requirements in EMC 19.37.100 and EMC 19.37.120, the following additional report requirements apply when assessing geologically hazardous areas.

1. A field investigation and geological assessment shall be prepared, stamped, and signed by a qualified professional to evaluate whether or not an active geological hazard area exists within two hundred feet of the site.

a. The geological assessment shall be submitted in the form of a Geological Assessment Letter when the qualified professional finds that no active geological hazard area exists on or within two hundred feet of the site. The Geological Assessment Letter shall meet the minimum required content listed in this chapter but may be abbreviated in form.

b. The geological assessment shall be submitted in the form of a Geotechnical Report when the qualified professional finds that an active geologically hazardous area exists on or within two hundred feet of the proposed project area. The geotechnical report shall meet the minimum requirements pursuant to this chapter.

2. A geological assessment shall include a field investigation and may include the use of historical air photo analysis, review of public records and documentation, and interviews with adjacent property owners or others knowledgeable about the area, etc.

3. A geological assessment shall include the following minimum information and analysis:

a. An evaluation of any areas on the site or within two hundred feet of the site that are geologically hazardous as set forth in EMC 19.37.210.

b. An analysis of the potential impacts of the proposed development activity on any geologically hazardous area. The analysis shall include information regarding any potential geological hazard that could result from the proposed development either on site or off site. For landslide hazard areas, the analysis shall consider the run-out hazard of landslide debris to the proposed development that starts upslope, whether the slope is part of the subject property or starts off site.

c. Identification of any mitigation measures required to eliminate potentially significant geological hazards both on the proposed development site and any potentially impacted off-site properties. When hazard mitigation is required, the mitigation plan shall specifically address how the proposed activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis. The mitigation plan shall include recommendations regarding any long-term maintenance activities that may be required to mitigate potential hazards.

d. The geological assessment shall document the field investigations, published data and references, data and conclusions from past geological assessments or geotechnical

investigations of the site, site-specific measurements, tests, investigations, or studies, as well as the methods of data analysis and calculations that support the results, conclusions, and recommendations.

e A statement that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site and provide a rationale for such conclusions based on geologic conditions and interpretations specific to the project.

f. If a landslide or erosion hazard is identified, provide minimum setback recommendations for avoiding the landslide or erosion hazard, recommendations on stormwater management and vegetation management and plantings, other recommendations for site development so that the frequency or magnitude of landsliding or erosion on or off the site is not increased, and recommendations are consistent with this article; For projects in seismic hazard areas, the report shall also include a detailed engineering evaluation of expected ground displacements, amplified seismic shaking, or other liquefaction and/or dynamic settlement effects and proposed mitigation measures to ensure an acceptable level of risk for the proposed structure type or other development facilities such as access roads and utilities;

g. The geological assessment shall contain a summary of any other information the geologist identifies as relevant to the assessment and mitigation of geological hazards.

B. *Geological Assessment Review*

1. Geological assessments shall be submitted to the department for review and approval as part of the integrated permit review process described in EMC Title 15, Local Project Review Procedures. The department shall review the geological assessment and either:

a. Accept the geological assessment; or

b. Reject the geological assessment and require revisions or additional information.

2. When the geological assessment has been accepted, the department shall issue a decision on the land use permit application as provided for in EMC Title 15, Local Project Review Procedures.

3. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period or if there is new information about a geological hazard, the applicant may be required to submit an amendment to the geological assessment.

19.37.230 GEOLOGICALLY HAZARDOUS AREAS – DEVELOPMENT STANDARDS

A*. Geologically Hazardous Slope Setbacks and Slope Protection.*

1. *Geotechnical Assessment Requirements.* Development proposals on or within two hundred feet of any area designated as or which, based on site-specific field investigation, the city has reason to believe are geologically hazardous areas shall submit a geological assessment as required by this chapter.

2. The setback buffer requirement shall be based upon information contained in a geological assessment, and shall be measured on a horizontal plane from a vertical line established at the edge of the geologically hazardous area limits (both from the top and toe of slope). In the event that a specific setback buffer is not included in the recommendation of the geological assessment, the setback buffer shall be based upon the standards contained in Chapter 18 of the International Building Code (IBC), or as the IBC is updated and amended.

a. If the geological assessment recommends setback buffers that are less than the standard buffers that would result from application of Chapter 18 of the IBC, the specific rationale and basis for the reduced buffers shall be clearly articulated in the geological assessment.

b. The city may require larger setback buffer widths under any of the following circumstances:

(1) The land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts.

(2) The area has a severe risk of slope failure or downslope stormwater drainage impacts.

(3) The increased buffer is necessary to protect public health, safety and welfare based upon findings and recommendations of the geological assessment.

3. Unless otherwise permitted as part of an approved alteration, the setback buffers required by this subsection shall be maintained in native vegetation to provide additional soil stability and erosion control. If the buffer area has been cleared, it shall be replanted with native vegetation in conjunction with any proposed development activity.

4. The city may impose seasonal restrictions on clearing and grading within two hundred feet of any geologically hazardous areas.

B. *Permitted Alterations.* Unless associated with another critical area, the planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow alteration of an area identified as a geologically hazardous area or the setback buffers specified in the IBC if an approved geotechnical report demonstrates that:

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, or erosion or sedimentation to off-site properties or bodies of water;

2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;

3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;

4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation, demonstrating the degree of the alteration is limited to the minimum needed to accomplish the project purpose;

5. The proposal is consistent with the purposes and provisions of this chapter and mitigates any permitted impacts to critical areas in the vicinity of the proposal;

6. The proposal mitigates all impacts identified in the geotechnical letter or geotechnical report;

7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas; and

8. The improvements are certified as safe as designed and under anticipated conditions by a geologist.

C. *Additional Requirements.* As part of any approval of development on or adjacent to geologically hazardous areas or within the setback buffers required by this chapter:

1. The city shall require:

a. Geologically hazardous areas not approved for alteration and their buffers shall be placed in a critical area protective covenant or tract as required by EMC 19.37. 170;

b. Any geologically hazardous area or required setback buffer that is allowed to be altered subject to the provisions of this chapter shall be subject to a covenant of notification and indemnification/hold harmless agreement in a form acceptable to the city attorney. Such document shall identify any limitations placed on the approved alterations.

2. The city may require:

a. The presence of a geologist on the site to supervise during clearing, grading, filling and construction activities which may affect geologically hazardous areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval, and other relevant information concerning the geologically hazardous conditions of the site;

b. Vegetation and other soil-stabilizing structures or materials be retained or provided;

c. Long-term maintenance of slopes and on-site drainage systems.

D. *Prohibited Alterations.* Modification of geologically hazardous areas shall be prohibited under the following circumstances:

1. Where geologically hazardous slopes are located in a stream, wetland, and/or a fish and wildlife habitat conservation area or their required buffers, alteration of the slopes is not permitted, except as allowed under EMC 19.37.050. The required buffer for such slopes shall be determined through the site-specific geological assessment, but in no case shall be less than twenty-five feet from the top of slopes of twenty-five percent and greater.

2. Any proposed alteration that would result in the creation of or which would increase or exacerbate existing geological hazards, or which would result in substantial unmitigated geological hazards either on site or off site, shall be prohibited.

ARTICLE III. WETLANDS

19.37.300 WETLANDS - DESCRIPTION AND PURPOSE

A. Wetlands are defined using the Washington State definition of wetlands established under RCW 36.70A.030(48) and as defined in EMC 19.04.110.

B. The purpose of this chapter's wetland regulations are to:

1. Recognize and protect the beneficial functions performed by wetlands, including those physical, biological, chemical, and geologic interactions within wetlands and the surrounding landscape, including buffers. These functions are often grouped into three main categories – water quality improvement functions, hydrologic functions, and habitat functions and may include but are not limited to:

a. The uptake, removal, transformation, and cycling of nutrients, sediment, and toxicants;

b. Floodflow alteration, surface water storage, reduction of peak flows, groundwater recharge, decreasing downstream erosion, and energy dissipation of flows;

c. Supporting food webs and providing several habitat niches and features for wildlife breeding, nesting, and rearing, and providing thermal refugia.

2. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values and of wetlands throughout the city.

3. Establish review procedures for development proposals in and adjacent to wetlands.

a. Compliance with the provisions of this chapter does not necessarily constitute compliance with other federal, state, and local regulations and permit requirements. Applicants are responsible for complying with these requirements.

19.37.310 WETLANDS – DELINEATION, MAPPING, AND RATING

A. *Wetland Delineation.* Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to

the provisions of this chapter. A wetland delineation shall be performed by a qualified professional experienced in wetland science. Wetland delineations are valid for five years, after such date, the city shall determine whether a revision or additional assessment is necessary.

B. *Wetland Mapping.* A wetland delineation shall result in a wetland boundary clearly marked in the field and an accurate ground-verified map of the boundaries. This map should be created using either a professional survey or using an equivalent method such as Global Positioning System (GPS) with sub-meter accuracy. The map shall also include an indication of where wetlands extend off site. The approximate location and extent of known or suspected wetlands are shown on the city's critical area maps. These maps shall be used as a guide for the city, applicants and/or property owners, and may be updated as new wetlands are identified.

C. *Wetland Rating.* Wetlands shall be rated and regulated according to the categories defined by the Washington State Department of Ecology Washington State Wetland Rating System for Western Washington 2014 Update Version 2.0, or as revised (Ecology Publication No. 23-06-009). Wetland ratings are valid for five years; after such date the city shall determine whether a revision or additional rating is necessary.

D. *Illegal Modifications of Wetlands.* Wetland rating categories shall not change due to illegal modifications made to the wetland.

19.37.320 WETLANDS - CRITICAL AREA REPORT ADDITIONAL REQUIREMENTS.

A. *Additional Critical Area Report Content for Wetlands.* A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist, a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science, including experience preparing wetland and stream reports, or a professional who demonstrates expertise in wetland science, stream ecology, or fish and wildlife biology to the satisfaction of the planning director.

1. Wetlands shall be rated according to the categories defined by the Washington State Department of Ecology Washington State Rating System for Western Washington 2014 Update, Version 2.0 or as revised (Ecology Publication No. 23-06-029).

2. Hydrogeomorphic classification; wetland acreage, and Cowardin classification of vegetation communities; and, to the extent possible, hydrologic information such as location and condition of inlet/outlets. Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

B. Wetland and buffer impact mitigation plans shall be prepared consistent with the guidance in Wetland Mitigation in Washington State: Part 2 - Developing Mitigation Plans (Ecology Publication #06-06-011b, or as revised). The report shall include a written plan and plan sheets that contain, at a minimum, the elements listed below.

1. The name and contact information of the applicant; the name, qualifications, and contact information of the primary author(s) of the compensatory mitigation plan; a description of the development proposal; a description of how the development project has been designed in accordance with mitigation sequencing provisions.

2. A baseline study that describes and quantifies the existing wetland and buffer functions, functions that will be lost, and the functions after mitigation. Include acreage or square footage of the existing wetland and buffer areas to be altered, landscape position, and surrounding land uses. Include a description of existing versus proposed water regimes, vegetation, soils, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating. This assessment could involve assessing functions using Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report, March 2012, Washington State Department of Ecology Publication No. 10-06-011, or as amended;

3. A description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions, including acreage or square footage of wetlands and uplands, water regime, sources of water, vegetation, soils, functions, landscape position, and surrounding land uses. Estimate future conditions in this location if the compensatory mitigation actions are not undertaken.

4. Describe the future vegetation community types for monitoring years, including dominant vegetation expected. Plants shall be native species, commercially available or available from local sources, high in food and cover value for fish and wildlife, and mostly perennial;

5. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies. Specify proposed mitigation actions, if applicable, and include written specifications and descriptions of the mitigation proposed, such as:

a. The proposed construction sequence, timing, and duration;

b. Grading and excavation details;

c. Erosion and sediment control features;

d. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and

e. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.; 6. Include measurable criteria for evaluating whether the performance goals of the mitigation proposal have been met, and include provisions for maintenance and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

7. Include a contingency plan specifying what corrective actions will be taken to achieve performance goals should the mitigation not be successful;

8. Include provisions for an assurance device as provided by Chapter 19.40 to ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occur on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This

guarantee shall not be released until the applicant's qualified professional and the planning director sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.

9. Include provisions for the protection of the mitigation site. The wetland mitigation area and any associated buffer shall be protected by a legal mechanism such as a critical area tract or critical area covenant. The planning director may approve another legal and administrative mechanism if it is determined to be adequate to protect the site.10. Scaled plan sheets shall contain, at a minimum:

a. Mapped, ground-verified edges of the existing wetlands and buffers, proposed areas of wetland and/or buffer impacts, and location of proposed wetland and/or buffer compensation areas.

b. Existing topography, ground-verified, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed in the compensation area(s). Also include existing cross-sections (estimated one-foot intervals) of wetland areas on the development site that are proposed to be altered and of the proposed areas of wetland and buffer compensation.

19.37.330 WETLANDS - BUFFER WIDTH REQUIREMENTS

A. *Wetland Buffer Widths.*

1. The following buffer widths listed in Tabes 37.2 and 37.3 apply to all wetlands within the city of Everett. Buffer widths have been established in accordance with the best available science. Buffers are based on the category of wetland and the habitat score as determined under EMC 19.37.310. Wetland buffers shall be measured perpendicular from the wetland boundary as delineated and marked in the field.

2. Wetland buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.330(F).

2. To maintain the integrity of the buffer, all principal buildings, as well as other structures and improvements shall maintain a setback from the buffer as specified in EMC 19.37.140.

3 The buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the buffer and habitat corridor vegetation may require enhancement or restoration per the following:

a. Applicability of Vegetative Buffer Standard. If the on-site buffer does not ~~contain~~ include a relatively intact native ~~vegetated~~ vegetative community, the buffer shall be enhanced or restored to contain a native vegetation community when either:

i. The total new net impervious area on the entire subject property exceeds 2,000 square feet; or

ii. The value of the new construction or alteration occurring within a two-year period is equal to or greater than fifty percent of the assessed value of the existing improvements; or

iii. More than 25% of the buffer on the subject site is covered with non-native and/or invasive vegetation.

b. Vegetative Buffer Standard. The following vegetative buffer standards shall be met when the proposal meets the applicability requirements:

i. An average 80 percent aerial cover of native vegetation, composed of trees, shrubs, and ground cover with at least 20 percent tree cover and 20 percent shrub cover, with no more than 10 percent cover of invasive species

c. Vegetative Buffer Alternative. Applicants can choose not to comply with the vegetative buffer standards by complying with the following requirements:

i. Increase wetland buffer widths by 33% within entire buffer; and

ii. Remove all unpermitted structures and improvements within the buffer.

User instructions: Use the following two tables to determine wetland buffers. Table 37.2 includes the standard wetland buffers without providing impact minimization measures and habitat corridors as described below. The reduced buffers in Table 37.3 apply to projects when the applicant elects to incorporate impact minimization measures in Table 37.4 and a habitat corridor.

Table 37.2: Standard Wetland Buffer Width Requirements for Applicants not Providing a Habitat Corridor or Implementing Impact Minimization Measures

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	100	150	300
	Bogs	250		300
	Estuarine	200		
II	All except estuarine	100	150	300
	Estuarine	150		
III		80	150	300
IV		50		

Table 37.3: Reduced Wetland Buffers When Impact Minimization Measures are Implemented and a Habitat Corridor is Provided

WETLAND CATEGORY	WETLAND TYPE	HABITAT FUNCTION SCORES		
		3-5 (Habitat Corridor Not Required)	6-7	8-9
		BUFFER WIDTHS (in feet)		
I	All including forested except those listed below	75	110	225
I	Bogs	190		225
I	Estuarine	150		
II	All except estuarine	75	110	225
II	Estuarine	110		
III		60	110	225
IV		40		

4. *Habitat Corridors.* When feasible, wetlands that score six points or more for habitat function can use the buffers in Table 37.3 provided all of the below criteria are met. Presence or absence of a nearby habitat corridor must be confirmed by a qualified professional. For wetlands that are unable to provide habitat corridors or that score five or fewer habitat points, only the measures in Table 37.4 are required.

a. A relatively undisturbed vegetation corridor at least 100 feet wide is protected between the wetland and:
    i. A legally protected, relatively undisturbed and vegetated area (e.g. Priority Habitats, compensatory mitigation sites, wildlife areas/refuges, county and state parks where they have management plans with identified areas designated as Natural, Natural Forest, or Natural Area Preserve), or
    ii. An area that is the site of a Watershed Project, identified within, and fully consistent with, a Watershed Plan as defined by RCW 89-08-460, or
    iii. An area where development is prohibited according to the provisions of the City's Shoreline Master Program, or
    iv. An area with equivalent habitat quality that has conservation status in perpetuity, in consultation with WDFW.
b. The corridor is permanently protected for the entire distance between the wetland and the shoreline or legally protected area by a conservation easement, deed restriction, or other legal site protection mechanisms.
c. Presence or absence of the shoreline or Priority Habitat must be confirmed by a qualified professional and the planning director.

d. The measures in Table 37.4 are implemented, as applicable, to minimize impacts of the adjacent land uses.

B. *Increased Wetland Buffer Width.* Buffer widths stated in subsection A of this section shall be increased:

1. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

a. The minimum buffer for that particular wetland; or

b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less for at least a horizontal distance of ten feet;

2. When the wetland is used by a state or federally listed plant or animal species under WAC 220-610-010, 50 CFR 17-11, 50 CFR 17-12, or other state or federal regulations; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron nesting colonies or raptor nesting trees, and the increased buffer is necessary to protect such habitat;

3. When a habitat assessment or habitat management plan is required by EMC 19.37. 110 and an increased buffer is necessary to protect critical habitat or affected species, the buffer shall be the buffer in the approved habitat assessment or habitat management plan;

4. When the adjacent land is classified as a geologically hazardous area, the buffer shall be the greater of the standard wetland buffer or the setback buffer required by EMC 19.37. 230;

5. When the wetland buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or

6. When the city finds, based upon a site-specific critical area analysis, that impacts to a wetland or other critical area from a proposed development can only be mitigated by a greater buffer width.

C. *Impact Minimization Measures*.
Developments that produce the listed disturbances and are requesting reduced wetland buffers per Table 37.3 are required to address the disturbance through the use of applicable minimization measures. This is not a complete list of measures, nor is every example measure required. Though not every measure is required, all effort should be made to implement as many measures as possible. Regulatory staff should determine, in coordination with the applicant, which measures are applicable and practicable. The critical areas report shall address how each impact minimization measure is being provided.

Table 37.4 – Impact Minimization Measures

Example of Disturbance	Activities and Uses that Cause Disturbances	Examples of Impact Minimization Measures
Light	• Parking lots • Commercial/Industrial uses • Residential uses	• Direct lights away from wetlands and buffers

	• Recreation (e.g. athletic fields) • Agricultural buildings	• Only use lighting when and where necessary for public safety • Motion-activated lighting • Use of full-cut off shields • Dim light to lowest acceptable intensity • Warmer lighting temperatures (<3000K)
Noise	• Commercial/Industrial uses • Residential uses • Recreation (e.g. athletic fields) • Agriculture	• Locate noise-generating activity away from wetlands and buffers • Construct fencing and/or install dense landscape screening between noise sources and critical area
Toxic Runoff	• Parking lots • Roads • Commercial/Industrial uses • Residential uses • Application of pesticides • Landscaping • Agriculture	• Route all new, untreated runoff away from wetlands and buffers while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetlands • Apply integrated pest management (These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)
Stormwater Runoff	• Parking lots • Roads • Commercial/Industrial uses • Residential uses • Recreation • Landscaping/lawns • Other impermeable surfaces, compacted soils, etc.	• Retrofit stormwater detention and treatment for roads and existing adjacent developments • Prevent channelized or sheet flow from lawns that directly enter buffers • Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns • Retain native vegetation elsewhere in the property
Pets and Human Disturbance	• Residential uses • Recreation	• Install privacy fencing • Plant dense native vegetation to delineate buffer edge and to discourage disturbance • Place wetlands and buffers in a separate tract • Install signage along wetland buffer edge
Dust	• Tilled Fields • Roads	• Use Best Management Practices to control dust

D. Where wetland functions have been improved due to voluntary implementation of an approved stewardship, restoration and/or enhancement plan that is not associated with required mitigation or enforcement, the wetland buffer width shall be determined based on the previously established wetland category and habitat score as documented in the approved stewardship and enhancement

E. *Functionally Disconnected Buffer Areas*. Buffers may exclude areas that are functionally and effectively disconnected from a wetland by an existing public or private road or legally established development, as determined by the planning director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer. Significant developments shall include built public infrastructure such as roads and railroads, and private developments such as homes or commercial structures. Examples of minor developments that do not fully block buffer functions include trails, minor accessory structures, paths, and driveways serving a single residence. The planning director shall evaluate whether the interruption will affect the entirety of the buffer. Individual structures may not fully interrupt buffer function. In such cases, the allowable buffer exclusion should be limited in scope to just the portion of the buffer that is affected. Where questions exist regarding whether a development functionally disconnects the buffer, or the extent of that impact, the planning director may require a critical area report to analyze and document the buffer functionality.

19.37. 340 WETLANDS - BUFFER WIDTH AVERAGING

The city may allow wetland buffer width averaging when all of the following are met:

A. No feasible alternatives to the site design could be accomplished without buffer averaging.

B. The total area on the lot contained within the buffer after averaging is not less than the area required within the buffer without averaging

C. Averaging will not reduce the functions and values of the critical area or buffer as demonstrated by a critical area report from a qualified professional.

D. The adjusted minimum buffer width shall not be less than seventy-five percent of the required buffer width at any point or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

19.37. 350 WETLANDS - COMPENSATORY MITIGATION

A. *Mitigation Sequencing.* Before being authorized to impact any wetland or its buffer, an applicant must demonstrate that they have implemented mitigation sequencing in the order presented in EMC 19.37.100.

B. *Requirements for Compensatory Mitigation*. Allowed wetland and wetland buffer compensation shall be subject to the following requirements:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State–Part 2: Developing Mitigation Plans—Version 1 (Ecology Publication #06-06-011b, or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach [Western Washington (Ecology Publication #09-06-32).

2. Mitigation ratios for wetland impacts shall be consistent with the Standard Wetland Compensatory Mitigation Ratios presented in this section.

3. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a minimum 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

4. Mitigation requirements may be determined using the Credit-Debit Method described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of [Western Washington (Ecology Publication #10-06-011)

5. Plantings used in mitigation actions shall be native species appropriate to the ecoregion.

6. The following areas within a proposed compensation site shall not contribute to satisfying the requirements for compensatory mitigation:

a. Easements for utility corridors, stormwater facilities, rights-of-way, and streams conveyed underground

b. Driveways

c. Roads

d. Any paved or graveled areas intended to convey vehicle or foot traffic.

7. Buffers on Wetland Mitigation Sites. All wetland mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. All required buffers for the wetland mitigation site shall be located on the subject site, except where wetland mitigation banking is used to purchase buffer credits. Buffers shall be based on the expected or target category of the proposed wetland mitigation site and the expected level of impact from the adjacent land use. Buffers need to be fully vegetated in order to be included in buffer area calculations. Lawns, walkways, driveways, paved areas, and mowed or developed areas will not be considered buffers or included in buffer area calculations when assessing whether adequate compensatory mitigation buffers have been provided. Properties adjacent to or abutting wetland mitigation sites shall not be responsible for providing any additional buffer requirements.

8. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

9. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, nonnative vegetation, or other material detrimental to the area by replanting disturbed vegetation, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to water quality or habitat exists.

C. *Compensating for Lost or Impacted Wetland Functions.* Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limited within a watershed through an existing watershed plan or a local or regional study that characterizes watershed processes; or

2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by a watershed plan, such as replacement of historically diminished wetland types.

D. *Preference of Mitigation Actions.* Mitigation for wetland and buffer impacts shall rely on a method listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified professional demonstrates to the planning director's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this Section.

1. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former or degraded wetland. Restoration is divided into two categories:

a. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions and environmental processes to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland area and functions. Example activities could include removing fill, plugging ditches, or breaking drain tiles to restore a wetland hydroperiod, which in turn will lead to restoring wetland biotic communities and environmental processes.

b. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions and environmental processes to a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland area. The area already meets wetland criteria, but hydrological processes have been altered. Rehabilitation involves restoring historic hydrologic processes. Example activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

2. Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland where a wetland did not previously exist at an upland site. Establishment results in a gain in wetland area and functions. An example activity could involve excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils by intercepting groundwater, and in turn supports the growth of hydrophytic plant species.

a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the planning director may authorize establishment of a wetland and buffer upon demonstration by the applicant's qualified professional that:

i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that establishment of a wetland at the site will not likely cause hydrologic problems elsewhere;

ii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

iii. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

iv. The proposed wetland would not be established at the cost of another high-functioning habitat (i.e., ecologically important uplands).

3. Preservation (Protection/Maintenance). The removal of a threat to, or preventing the decline of, wetlands by an action in or near those wetlands. This term includes activities commonly associated with the protection and maintenance of wetlands through the implementation of appropriate legal and physical mechanisms such as recording conservation easements and providing structural protection like fences and signs. Preservation does not result in a gain of aquatic resource area or functions but may result in a gain in functions over the long term. Preservation of a wetland and associated buffer can be used only if:

a. The planning director determines that the proposed preservation is the best mitigation option;

b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

c. The area proposed for preservation is of high quality or critical for the health and ecological sustainability of the watershed or sub-basin. Some of the following features may be indicative of high-quality sites:

i. Category I or II wetland rating

ii. Rare or irreplaceable wetland type [e.g, peatlands, mature forested wetland, estuaries, vernal pools, alkali wetlands] or aquatic habitat that is rare or a limited resource in the area.

Iii. The presence of habitat for threatened or endangered species (state,federal, or both).

iv. Provides biological and/or hydrological connectivity to other habitats.

v. Priority sites identified in an adopted watershed plan.

d. Permanent preservation of the wetland and buffer shall be provided through a legal mechanism such as a conservation easement or tract held by an appropriate natural land resource manager/land trust.

e. The planning director may approve another legal and administrative mechanism in lieu of a conservation easement if it is determined to be adequate to protect the site.

4. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify, or improve specific wetland function(s). Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in the gain of selected wetland function(s) but may also lead to a decline in other wetland function(s). Enhancement does not result in a gain in wetland area. Enhancement activities could include planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods in existing wetlands.

Applicants proposing to enhance wetlands and/or associated buffers shall demonstrate how the proposed enhancement will increase the wetland and/or buffer functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

5. Alternative Types of Mitigation/Resource Tradeoffs. The planning director may approve alternative mitigation proposals that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals shall provide an equivalent or better level of ecological functions and values than would be provided by standard mitigation approaches. Alternative mitigation approaches shall comply with all reporting, monitoring, and performance measures of this Section including adherence to mitigation sequencing. The city may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas. The planning director will consider the following for approval of an alternative mitigation proposal:

a. Clear identification of how an alternative approach will achieve equal or better ecological benefit.

b. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach in Western Washington (Ecology Publication #09-06-32), or as revised].

c. All impacts are identified, evaluated, and mitigated.

d. Methods to demonstrate ecological success are clear and measurable.

E. Location of Compensatory Mitigation. Permittee-responsible compensatory mitigation actions shall be conducted using a watershed approach and shall generally occur within the same sub-drainage basin. However, when the applicant can demonstrate that a mitigation site in a different sub-drainage basin is ecologically preferable, it ~~should~~ may be used. Compensatory mitigation areas shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolation and fragmenting effects of development on habitat areas. The following criteria will be evaluated when determining whether on-site or off-site compensatory mitigation is ecologically preferable. When considering the location of mitigation, preference ~~should~~ may be given to using programmatic approaches, such as a mitigation bank or an in-lieu fee program after evaluating the following criteria.

1. No reasonable opportunities exist on site or within the sub-drainage basin or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capability of the site to compensate for the impacts. Considerations should include anticipated replacement ratios for wetland mitigation, buffer conditions and required widths, available water to maintain anticipated hydrogeomorphic class(es) of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. On-site mitigation would require elimination of high-quality upland habitat;

3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions compared to the altered wetland.

4. Off-site locations shall be in the same sub-drainage basin unless:

a. Watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify locating mitigation at another site;

b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;

c. Fees are paid to an approved ILF program to compensate for the impacts.

5. The design for the compensatory mitigation project needs to be appropriate for its position in the landscape. Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.

F. Timing of Compensatory Mitigation. Compensatory mitigation projects should be completed prior to activities that will impact wetlands. For category I wetlands, the city shall require the relocated wetland area to be completed and functioning prior to allowing the existing wetland to be altered. Otherwise, compensatory mitigation shall be completed immediately following wetland impacts and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The planning director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties. For example, a project delay that creates conflicts with other regulatory requirements (fisheries, wildlife, stormwater, etc.) or installing plants should be delayed until the dormant season to ensure greater survival of installed materials. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the delay shall include a written justification that documents the environmental constraints that preclude timely implementation of the compensatory mitigation plan. The justification will be verified by the city who will issue a formal decision.

G. Wetland Compensatory mitigation Ratios. In approving alteration of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensatory mitigation for destruction of the functions of the altered wetland and to ensure that such functions are replaced. The ratios in this section are based on wetland category, function, special characteristics, risk, and temporal loss. When mitigating allowed impacts to wetlands, the standard ratios in Table 37.4 shall be used, except as otherwise provided below in this subsection.

Table 37. 5: Standard Wetland Compensatory Mitigation Ratios

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only[1]	Reestablishment or Creation (R/C) plus Rehabilitation (RH)[1]	Reestablishment or Creation (R/C) plus Enhancement (E)[1]	Reestablishment or Creation (R/C) plus Preservation (P)[1]	Enhancement Only[1]
All category IV	1.5:1	3:1	1:1 R/C plus 1:1 RH	1:1 R/C plus 2:1 E	1:1 R/C plus 2:1 P	6:1
All category III	2:1	4:1	1:1 R/C plus 2:1 RH	1:1 R/C plus 4:1 E	1:1 R/C plus 4:1 P	8:1
Category II Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case	Case-by-case
All other category II	3:1	6:1	1:1 R/C plus 4:1 RH	1:1 R/C plus 8:1 E	1:1 R/C plus 8:1 P	12:1
Category I Forested	6:1	12:1	1:1 R/C plus 10:1 RH	1:1 R/C plus 20:1 E	1:1 R/C plus 20:1 P	24:1
Category I Based on score for functions	4:1	8:1	1:1 R/C plus 6:1 RH	1:1 R/C plus 12:1 E	1:1 R/C plus 12:1 P	16:1
Category I Bog	Not considered possible[2]	6:1 Rehabilitation of a bog	R/C Not considered possible[2]	R/C Not considered possible[2]	R/C Not considered possible[2]	Case-by-case
Category I Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case	Case-by-case

[1] These ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

[2] Bogs are considered irreplaceable wetlands because they perform some special functions that cannot be replaced through compensatory mitigation. Impacts to such wetlands would therefore result in a net loss of some functions no matter what kind of compensatory mitigation is proposed.

a. As an alternative to the mitigation ratios described above, the planning director may allow mitigation based one of the following ways:

i. Using the Credit-Debit Method developed by the Department of Ecology in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of [Western Washington (Ecology Publication # 10-06-011), or as amended.

ii. For properties designated "urban mixed-use industrial" in the city's shoreline master program, the applicant shall use the Snohomish Estuary Wetland Integration Plan (SEWIP, 1997) and Salmon Overlay (2001) for projects that include wetland compensatory mitigation. Per Table 37.4, mitigation ratios for estuarine wetlands shall be determined on a case-by-case basis.

b. In no case shall the mitigation acreage be less than that which is altered.

19.37.360 WETLANDS - APPROACHES TO COMPENSATORY MITIGATION

A. *Wetland mitigation banks*. For any wetland mitigation bank certified under Chapter 173-700 WAC, credits from a wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument when all of the following are met:

1. The director determines that the wetland mitigation bank provides appropriate compensatory mitigation for the authorized impacts.

2. The proposed use of credits is consistent with the terms and conditions of the mitigation bank instrument.

3. Mitigation ratios are consistent with the mitigation bank instrument.

B. *In-Lieu Fee Mitigation.* Credits from an approved in-lieu fee program may be used when all the following apply:

1. The planning director determines that it would provide appropriate compensation for the proposed impacts.

2. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.

3. Projects using ILF credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the ILF program.

4. The impacts are located within the service area specified in the approved in-lieu fee instrument.

C. Permittee-responsible, advance mitigation. Advance mitigation is a form of permittee-responsible mitigation implemented before a permitted impact takes place. It is designed to compensate for impacts expected to occur in the future. The applicant proposing the advance mitigation is the only one who can use the credits generated. Credits cannot be sold or transferred to another applicant. Advance mitigation proposals should be developed in accordance with state and federal rules and guidance on advance mitigation (Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation, Ecology

Publication #12-06-015, and Chapter 4.2 of Wetland Mitigation in Washington State–Part 1: Policies and Guidance—Version 2, Ecology Publication #21-06-003,or as revised).

D. Permittee-responsible, concurrent mitigation. Concurrent mitigation is a form of permittee-responsible mitigation implemented at the same time permitted impacts are occurring. The permittee is responsible for implementation and success of the compensation. Concurrent mitigation may occur at the site of the permitted impacts or at an off-site location, usually within the same watershed. Permittee-responsible, concurrent mitigation shall be used only if the applicant's qualified professional demonstrates to the planning director's satisfaction that the proposed approach is ecologically preferable to use of a bank or in-lieu fee program, consistent with the criteria in this Section.

ARTICLE IV. FREQUENTLY FLOODED AREAS

19.37.400 AREAS OF SPECIAL FLOOD HAZARD

Areas of special flood hazard shall be governed by the provisions of Chapter 19.30.

ARTICLE V. FISH AND WILDLIFE HABITAT CONSERVATION AREAS

19.37.500 FISH AND WILDLIFE HABITAT CONSERVATION AREAS - DESCRIPTION AND PURPOSE

A. All areas meeting the definition of fish and wildlife habitat conservation areas are subject to the regulations in this chapter. The intent of the management of these areas is to ensure sufficient habitat quality, quantity, and connectivity for species within their natural geographic distribution in order to support viable populations over the long term and to prevent isolated subpopulations.

Fish and wildlife habitat conservation areas are ecosystems composed of unique interacting systems of soils, geology, topography, and plant and animal communities. They consist of land-based areas and aquatic areas. Wildlife habitat provides opportunities for food, cover, nesting, breeding, and movement for fish and wildlife within the City; maintains and promotes diversity of species and habitat within the City; helps to maintain air and water quality; controls erosion; serves as areas for recreation, education and scientific study, and aesthetic appreciation; and provides neighborhood separation and visual diversity within urban areas.

Riparian corridors are essential for wild fish populations. Healthy riparian zones are dynamic ecosystems that perform various functions that form salmonid habitat. Some of the major functions include producing and delivering large and small woody debris to shorelines and stream channels; shoreline protection and habitat formation; removing sediments and dissolved chemicals from water; moderating water temperature; providing thermal refugia; providing habitat for terrestrial animals; and providing proper nutrient sources for aquatic life. Additionally, aquatic areas and their associated buffers store and convey stormwater and floodwater; recharge groundwater; and serve as areas for recreation, education and scientific study and aesthetic appreciation. B. The following actions are exempt from other requirements of this chapter, but may require preparation of a habitat assessment or biological assessment when conducted within a fish and wildlife habitat conservation area, and must result in no net loss of ecological functions and values:

1. EMC 19.37.060(B)(1), Minor utility construction projects.

2. EMC 19.37.060(B)(4), Public and private pedestrian paths and trails

3. Any development application that involves ESA Section 7 consultation with federal agencies is required to follow that process to determine impacts to endangered species and mitigation requirements rather than the procedure described herein. However, the application must demonstrate compliance with all applicable city regulations, and must submit a copy of the biological assessment provided to federal agencies as part of the city's permit process.

4. Maintenance of critical public infrastructure.

19.37.510 FISH AND WILDLIFE HABITAT CONSERVATION AREAS - DESIGNATION AND MAPPING

A. Fish and wildlife habitat conservation areas that must be considered for classification and designation include:

1. Areas where endangered, threatened, and sensitive species have a primary association;

a. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

b. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington State Department of Fish and Wildlife that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12- 011 (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status

2. Habitats and species of local importance, as determined locally;

a. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the State Department of Fish and Wildlife and included on its current Priority Habitats and Species List, as amended.

3. Commercial and recreational shellfish areas;

4. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;

5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

a. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

6. Waters of the state;

a. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington~~, as classified in WAC 222-16-030.~~

7. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

8. State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources.

9. Significant biological areas listed by the city.

B. *Fish and Wildlife Habitat Conservation Areas Mapping.* The approximate location and extent of fish and wildlife habitat conservation areas within the city of Everett's planning area are shown on maps compiled and maintained by the city planning department. These maps shall be used as a general guide only for the assistance of property owners, project applicants, and other interested parties; boundaries are generalized. The actual type, extent and boundaries of fish and wildlife habitat conservation areas shall be determined by a qualified professional according to the definitions and criteria established by this chapter. In the event of any conflict between the habitat location or type shown on the city's fish and wildlife habitat conservation areas maps and the criteria or standards of this chapter, the criteria and standards resulting from the field investigation shall control.

C. Other mapping sources include the Washington State Department of Fish and Wildlife priority habitat and species maps.

D. Streams and waters shall be classified based upon an amended version of the water classification system established under WAC 222-16-030 as follows:

1. *Type S Water.* Those streams and waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, including periodically inundated areas of associated wetlands.

2. *Type F Water.* Those segments of natural waters including periodically inundated areas of their associated wetlands, not classified as Type S Waters, which have a fish, wildlife, or human use; which in any case contain fish habitat or are described by one of the following seven categories:

a. Waters within lakes, ponds, or impoundments having a surface of 0.5 acre or greater at seasonal low water;

b. Stream segments having a defined channel 20 feet or greater within the bankfull width and having a gradient of less than four percent;

c. Waters which are off-channel habitat. These are areas important for rearing and survival of fish and include riverine ponds, wall-based channels, and stream associated wetlands. The area must be connected to Type F or Type S Water and accessible to fish during some portion of the year.

i. For channelized streams, the edge of off-channel habitat is determined based on the outer edge of inundation of the stream at the bankfull elevation flow.

ii. For nonchannelized streams, including stream associated wetlands, off-channel habitat is the outer edge of the area periodically inundated at the ordinary high water line.

d. Waters used by fish. Where fish use has not been determined:

i. Waters having any of the following characteristics are presumed to have fish use:

A. Stream segments having a defined channel of two feet or greater within the bankfull width and having a gradient of 16 percent or less;

B. Stream segments having a defined channel of two feet or greater within the bankfull width and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size, based on hydrographic boundaries;

C. Ponds or impoundments having a surface area of less than one acre at seasonal low water and having an outlet to a fish stream;

D. Ponds or impoundments having a surface area of 0.5 acre or greater at seasonal low water;

E. Waters within the anadromous fish floor, see WAC 222-16-0301.

ii. The planning director may waive or modify the characteristics in (d)(i) of this subsection based on a report prepared by a qualified professional where:

A. Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;

B. Snowmelt streams with short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1st; or

C. Sufficient information about a geomorphic region is available to support a departure from the characteristics in (d)(i) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes, and interested parties.

e. Waters diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where the department determines the diversion is a valid appropriation of water. These waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

f. Waters diverted for use by a federal, state, tribal or private fish hatchery. These waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water classification if the department determines after a landowner-requested interdisciplinary team assessment that:

i. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

ii. The additional harvest within the riparian management zone meets the requirements of the water type classification that would apply in the absence of the hatchery;

g. Waters within a federal, state, local governmental entity, or private campground having more than 10 camping units. These are waters that enter a campground at the boundary of the park lands available for public use and come within 100 feet of a camping unit, trail or other park improvement;

3. *Type Np Water.* Those segments of natural waters within the bankfull width of perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see Washington Forest Practices Board Manual, Section 23), then said point shall be determined by a qualified professional selected or approved by the city.

4. *Type Ns Water.* Those segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from a Type Np Water. Type Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

5. For purposes of this section:

a. "Residential unit" means a home, apartment, condominium unit or mobile home, serving as the principal place of residence.

b. "Camping unit" means an area intended and used for:

i. Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

ii. A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

c. "Public accommodation facility" means a business establishment licensed to serve the public, such as a restaurant, tavern, motel or hotel.

d. "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

e. "Seasonal low water" means the conditions of the seven-day, two-year low water situation, as measured or estimated by accepted hydrologic techniques.

f. "Bankfull width" for defined channels means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. See the Washington Department of Natural Resources board manual section 23.

g. "Intermittent" means those segments of streams that normally go dry.

E. *Lakes.* Silver Lake shall be protected as required by the shoreline master program. All other lakes shall be subject to the regulations in this chapter.

19.37.520 FISH AND WILDLIFE HABITAT CONSERVATION AREAS - CRITICAL AREA REPORT ADDITIONAL REQUIREMENTS

In addition to the general critical area report requirements in EMC 19.37.110 and EMC 19.37.120, the following additional report requirements apply when a proposal is within or near a fish and wildlife habitat conservation area:

A. *Goals and Additional Requirements.* If a development or redevelopment is proposed on or within a distance which could impact habitats of primary association, significant biological areas, and/or vegetative corridors linking watersheds, as described in this title, the applicant shall provide a habitat assessment. In areas within the riparian habitat zone or special flood hazard area, a biological assessment is required. The biological assessment shall be prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation produced by FEMA Region 10, April 2011, or as amended. The biological assessment must demonstrate that any proposed development in the riparian habitat zone or the floodway, coupled with appropriate habitat conservation measures, does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids.

If the habitat assessment/biological assessment determines that the proposed development could potentially adversely impact a fish and wildlife habitat conservation area, the applicant shall provide a habitat management plan (HMP) as described in this article, prepared by a wildlife biologist for

evaluation by the city, state and federal agencies. The HMP must address activities that can be taken to preserve, protect, or enhance the affected fish and wildlife habitat conservation areas. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. If the habitat assessment finds that the proposed development could result in substantial elimination of or significant reduction in riparian corridors, existing connections between critical areas, or continuous vegetated corridors linking watersheds, the HMP must analyze alternatives and measures to maximize the maintenance of existing corridors. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

1. *Distance for Habitats of Primary Association.*

a. *Salmonids and Steelhead.* When development is proposed within the distances specified below, a habitat assessment shall be required.

(1) Within two hundred fifty feet of the Snohomish River or its estuary;

(2) Within two hundred feet of a Type S or Type F stream or water including but not limited to North Creek or Swamp Creek together with tributaries with direct confluence to those streams and the associated wetlands, and marine shorelines;

(3) Within one hundred fifty feet of Lake Chaplain;

(4) Within two hundred twenty-five feet of a Type Np or Ns stream with unstable slopes within the special flood hazard area;

(5) Within one hundred fifty feet of a Type Np or Ns stream without unstable slopes within the special flood hazard area; or

(6) Within the special flood hazard area.

b. *Other Species.* If habitats of primary association are identified for other species, the director, after consulting with the Department of Fish and Wildlife, shall determine the appropriate distance from a designated fish and wildlife habitat conservation area which will require a habitat assessment or HMP.

c. *Continuous Vegetative Corridors Linking Watersheds and Significant Biological Areas.* If a development is proposed within an area that provides a continuous vegetative corridor linking watersheds or a significant biological area, a habitat assessment is required.

B. Habitat Assessment.

1. A habitat assessment may be integrated into another critical area study or provided as a separate report, provided the requirements of this subsection are met.

2. The habitat assessment shall be completed by a qualified professional with expertise and experience in preparing fish and wildlife critical area reports or biological assessments.

3. The purpose of the assessment is to determine whether or not a fish or wildlife habitat conservation area identified in this title and any associated buffer are located on or adjacent to a proposed development, and whether the proposed development could potentially adversely impact the regulated fish or wildlife habitat area and affected species.

4. If an approved habitat assessment determines that no fish or wildlife habitat conservation areas identified in this title or associated buffers are present on or adjacent to the site, or that the proposal will not adversely impact those areas and/or affected species, then the fish and wildlife habitat area review will be considered complete.

5. If the habitat assessment determines that a fish or wildlife habitat conservation area identified in this title or associated buffers are present on or adjacent to the proposed development and that the proposal will potentially adversely impact those areas and/or affected species, an habitat management plan shall be prepared. The habitat management plan must identify all actions that could be taken and which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term and/or actions to maintain or enhance the significant features present.

6. The director may consult with the Department of Fish and Wildlife before accepting the habitat assessment as final, and if recommended by the Department of Fish and Wildlife may require preparation of an HMP.

7. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.

8. The department shall review the habitat assessment and either:

a. Accept the habitat assessment as complete and include any recommended mitigation measures necessary to reduce impacts to the critical fish and wildlife habitat conservation areas or affected species as project requirements; or

b. Require preparation of an habitat management plan if the habitat assessment indicates potential unmitigated adverse impacts to the critical fish and wildlife habitat conservation areas or affected species.

C. *Habitat Management Plan.*

1. *Habitat Management Plan Submittal and Review Process.* The habitat management plan shall be prepared by a qualified professional who understands the habitat requirements for the affected species. The consultant must demonstrate such expertise to the satisfaction of the director, who may require resumes, work examples or other information demonstrating professional expertise on relevant habitat and/or fisheries issues. The city will meet with the consultant and direct preparation of the habitat management plan. The city must review and accept the habitat management plan as complete before issuing any approvals for the proposed development. In the event of a dispute regarding appropriate content in the habitat management plan, the city may require additional studies or additional supporting information as provided for by this chapter.

2. A biological assessment which meets the requirements of federal and state agencies may be accepted as meeting these requirements.

3. The habitat management plan shall be evaluated by city, state and federal agencies with permit jurisdiction or expertise, as required by this section, and the director shall consider all comments submitted by state and federal agencies, and require necessary revisions to the HMP, if any, prior to accepting the HMP as final.

4. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts to the habitat conservation area and affected species. Mitigation measures shall be based upon the analysis, conclusions, and recommendations contained in the habitat management plan. At a minimum, all requirements and mitigation measures necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term shall be required as permit conditions for the development proposal.

D. *Compensatory mitigation for Impacts within the One-Hundred-Year Floodplain.*

1. Compensatory mitigation must be provided for any effects to floodwater storage and fish habitat function within the one-hundred-year floodplain. Indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, etc.) must be mitigated such that equivalent or better salmon habitat protection is provided.

2. The mitigation plan shall stipulate avoidance and conservation measures, as are needed to ensure that there is no net adverse effect during any phase of the project. Outside the floodway or riparian habitat zone, the mitigation plan shall include such avoidance, minimization, restoration, conservation or compensatory mitigation measures to mitigate all impacts.

3. Calculation of impacts and mitigation shall be performed in accordance with Planning Director Interpretation No. 2011-1, or as amended.

4. The following priorities for mitigation of impacts to fish habitat within the one-hundred-year floodplain shall be considered in the habitat assessment and mitigation plan, with the long-term goal of improving functions and values of fish habitat in the estuary over existing conditions:

a. Assignment (purchase) of equivalent mitigation credits from an established mitigation bank within the estuary;

b. Creation or restoration of the functions and values of fish habitat in an area that is available to fish more frequently than the habitat being impacted;

c. Creation or restoration of off-channel refuge habitat;

d. Restoration of fish habitat where it has been previously eliminated or degraded;

e. Enhancement of existing habitat to improve functions and values;

f. Buffer enhancement in riparian habitat areas;

g. Replacement of the habitat functions and values that are impacted by development.

5. Also in accordance with RPA-3.A.3.b, where conditions permit, the city shall require development within the one-hundred-year floodplain to use low impact development (LID) methods consistent with the city's stormwater management regulations, to minimize or avoid stormwater effects.

6. All development proposals shall follow the mitigation sequence of EMC 19.37.100 to achieve no net loss of ecological functions and values.

7. When development occurs in floodplain areas, the portion of the site not elevated above the one-hundred-year flood elevation shall be designed to create floodplain refugia and prevent stranding of aquatic species during flood events to the maximum extent practicable.

8. Restoration of fish habitat either on site or off site is allowed in order to mitigate for habitat impacts caused by development within the floodplain. Restoration and mitigation for impacts may occur in areas which flood more frequently than the area proposed for development (e.g., tidal restoration project that provides greater habitat benefits to juvenile salmonids).

9. The city shall have the authority to require changes in the design of a development if necessary to avoid, minimize or mitigate impacts to endangered species or habitat for such species.

D. *Additional Critical Area Report Content for Biological Assessments (BA).* Biological Assessments must conform with 2010 FEMA Region X Regional Guidance - Floodplain Habitat Assessment and Mitigation. Refer to the requirements for habitat assessments in this subsection.

E. *Additional Critical Area Report Content for Habitat Assessment and Habitat Management Plans (HMP).*

1. *Habitat Assessment.* All habitat assessments required by this chapter shall include the following elements in addition to the general requirements for all critical area reports listed in this section:

a. A detailed description of the vegetation on and adjacent to the site.

b. Identification and a detailed description of any critical fish or wildlife species or habitats, including listed threatened or endangered species, as set forth in this chapter, on or adjacent to the site and the distance of such habitats or species in relation to the site. Describe efforts to determine the status of any critical species in the project area, including information on survey methods, timing, and results of surveys for species or suitable habitat identification.

c. Include any information received from biologists with special expertise on the species or habitat type, such as WDFW, Tribal, USFS, or other local, regional, federal, and university fish, wildlife and habitat biologists and plant ecologists. Include any such conversations in the habitat assessment and cite as personal communication.

d. An assessment of the project's direct and indirect potential impacts and cumulative impacts on the subject habitat, including water quality impacts.

e. A discussion of potential mitigation measures that would avoid or minimize temporary and permanent impacts, proposed mitigation measures, contingency measures, and monitoring plans.

f. The city may require that the applicant request a separate evaluation of the site by WDFW staff to confirm the findings of the habitat assessment.

g. Developments in the floodplain must show the one-hundred-year flood elevation contour, the floodway boundary, and the protected area boundary on the site plan.

2. *Habitat Management Plan.* The director may require that all or a portion of the following be included in a habitat management plan:

a. A map drawn to scale or survey showing the following information:

i. All lakes, ponds, streams, wetlands and tidal waters on or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream or wetland category consistent with the requirements of this chapter;

ii. The location and description of the fish and wildlife habitat conservation area on the subject property, as well as any potential fish and wildlife habitat conservation area within a distance of the subject property that may impact an affected species or habitat; and

iii. The location of any observed evidence of use by a species regulated by the provisions of the fish and wildlife habitat sections of this chapter.

b. An analysis of how the proposed development activities will affect the fish and wildlife habitat conservation area and any affected species including the potential direct, indirect, and cumulative effects of the proposed action on the regulated species and its habitat within the project area.

c. Provisions to reduce or eliminate the impacts of the proposed development activities on any fish and wildlife habitat conservation area and affected species. The habitat management plan should describe components of the project that may benefit or promote the recovery of listed species and are included as an integral part of the proposed project. These conservation (or mitigation) measures serve to minimize or compensate for project effects on the species under review. The following items should be addressed:

(1) Provide specific recommendations, as appropriate, to reduce or eliminate the adverse effects of the proposed activity. Potential measures include: timing restrictions for all or some of the activities; clearing limitations; avoidance of specific areas; special construction techniques; habitat management plan

conditions; replanting with native vegetation; potential of habitat enhancement (i.e., fish passage barrier removal); best management practices, etc.;

(2) Include a description of proposed monitoring of the species, its habitat, and mitigation effectiveness, for a minimum of five years.

d. The habitat management plan shall identify the specific habitat objectives the habitat management plan is designed to achieve and include recommendations regarding all actions taken which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term, and/or actions to maintain or enhance the significant features present

F. *Stream, Lake, and Buffer Mitigation Plans.* Stream, lake and buffer mitigation plans shall:

a. Include a baseline study that quantifies the existing functions of the system, functions that will be lost, and the stream and buffer functions after mitigation;

b. Specify how functions will be replaced;

c. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;

d. Where buffer enhancement is proposed, include an analysis of the ability of the buffer to protect water quality, as outlined in the Update on Wetland Buffers: The State of the Science, Final Report, October 2013, Washington State Department of Ecology Publication No. 13-06-11, or as amended;

e. Include provisions for maintaining and monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

f. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

g. Include provisions for an assurance device as provided by Chapter 19.40 EMC to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

19.37.530 FISH AND WILDLIFE HABITAT CONSERVATION AREAS – STREAM AND LAKE BUFFER REQUIREMENTS

A. *Stream Buffer Width.* It is the goal of this chapter to preserve streams and their buffers in a natural condition to the maximum extent possible.

1. Buffers shall be measured from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the ordinary high water mark shall be determined so as to include the entire stream feature.

2. Stream buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.530(H).

3. To maintain the integrity of the buffer, all principal buildings, as well as other structures and improvements shall maintain a setback from the buffer as specified in EMC 19.37.140.

4. The buffer widths required by this chapter presume the existence of a relatively intact native vegetated community including native tree cover, shrub understory and ground cover. If the existing stream buffer is unvegetated, sparsely vegetated, or vegetated with invasive species, the standard buffer width shall be restored or increased as required by this section unless otherwise provided.

5. Except as otherwise provided by EMC 19.37.050, the following buffers of native vegetation shall apply to streams based upon stream classification:

Table 37.5: Stream Buffers

Stream Classification (Type)	**Standard Buffer**	**Increased Buffer**
	Intact Native Vegetation	**Unvegetated; Sparsely Vegetated; or Vegetated with Invasive Species**
Type S	100 feet	150 feet
Type F	100 feet	150 feet
Type Np	100 feet	125 feet
Type Ns	100 feet	125 feet

B. *Stream Buffer Width Increase.* The city shall require increased buffer widths as necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual impacts and the increased buffer width is necessary to protect the critical areas described in this subsection. Circumstances which may require buffers beyond minimum requirements include, but are not limited to, the following:

1. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

   a. The minimum buffer for that particular stream; or

   b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less;

2. The stream reach affected by the development proposal serves as critical habitat for listed species as determined by the city using information from resource agencies including, but not limited to, the Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and recognized tribal nations;

3. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron nesting colonies or raptor nesting or lookout trees;

4. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;

5. Increased buffer width is necessary to effectively include the riparian corridor of the stream.

C. *Standard Stream Buffer Width Application with Enhancement.* The planning director may, using the review process as described in EMC Title 15, Local Project Review Procedures, apply the standard stream buffer width when the existing buffer is unvegetated, sparsely vegetated, or vegetated with nonnative invasive species and when buffer enhancement is provided per the following criteria.

1. The planning director shall only allow standard buffer width application to streams when the proposal includes a critical area and buffer enhancement plan that improves the functions of the buffer and the critical area in accordance with this chapter.

2. *Vegetative Buffer Standard.* The following vegetative buffer standards shall be met when applying the standard buffer to streams with vegetative enhancement:

a. An average 80 percent aerial cover of native vegetation, composed of trees, shrubs, and ground cover with at least 20 percent tree cover and 20 percent shrub cover; and

b. No more than 10 percent cover of invasive species.

D. *Riparian Wetland.* Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement shall apply.

E. *Lake Buffers.* Lakes have the following buffers:

a. Lakes used by salmonids: one hundred feet;

b. Lakes with no salmonid use: one hundred feet.

c. Lake buffers shall exclude functionally disconnected areas legally altered as described in EMC 19.37.530(H).

If a wetland or stream occurs along the fringe of a lake, the buffer shall be the greater of that required for the lake or for the wetland or stream.

F. *Buffers for Restored Stream Channels.* When a culverted portion of a stream is proposed to be restored to an open channel, the buffer width shall be determined by the director following review of a critical area study. The study must include an analysis of the buffer width necessary to protect water quality and habitat functions of the stream.

G. *Riparian Corridors.* When a development is proposed on a lot with a disturbed riparian corridor, the city shall require that the habitat be enhanced by creating more diversity and eliminating any source of degradation, including, but not limited to:

1. Vegetative plantings of native or preferred wildlife food species;

2. Construction of nesting islands or installation of nesting boxes;

3. Removal of pollutant sources, hard armoring, or fish movement blockages; or

4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat.

H. *Functionally Disconnected Buffer Areas*. Buffers may exclude areas that are functionally and effectively disconnected from a stream or lake by an existing public or private road or legally established development, as determined by the planning director. Functionally and effectively disconnected means that the road or other significant development blocks the protective measures provided by a buffer. Significant developments shall include built public infrastructure such as roads and railroads, and private developments such as homes or commercial structures. Examples of minor developments that do not fully block buffer functions include trails, minor accessory structures, paths, and driveways serving a single residence. The planning director shall evaluate whether the interruption will affect the entirety of the buffer. Individual structures may not fully interrupt buffer function. In such cases, the allowable buffer exclusion should be limited in scope to just the portion of the buffer that is affected. Where questions exist regarding whether a development functionally disconnects the buffer, or the extent of that impact, the planning director may require a critical area report to analyze and document the buffer functionality.

19.37.540 FISH AND WILDLIFE HABITAT CONSERVATION AREAS – BUFFER WIDTH AVERAGING FOR LAKES AND STREAMS

The city may allow buffer width averaging for lakes and streams when all of the following are met:

A. No feasible alternatives to the site design could be accomplished without buffer averaging;

B. The total area on the lot contained within the buffer after averaging is not less than the area required within the buffer without averaging;

C. Averaging will not reduce the functions and values of the critical area or buffer as demonstrated by a critical area report from a qualified professional; and

D. The adjusted minimum buffer width shall not be less than seventy-five percent of the required buffer width at any point.

19.37.550 FISH AND WILDLIFE HABITAT CONSERVATION AREAS – STREAM ALTERATION THRESHOLDS AND COMPENSATORY MITIGATION

A. *Stream Preservation/Alteration Thresholds.*

1. *Type S Streams.* All Type S streams shall be regulated by the city of Everett shoreline master program.

2. *Type F Streams.* All Type F streams shall be preserved. The city may only allow alteration of Type F streams under the following circumstances:

a. Where alteration is allowed pursuant to EMC 19.37.050;

b. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for

the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW;

c. When the proposal results in significant restoration of functions to the stream segment and the alteration is approved by the Washington State Department of Fish and Wildlife.

3. *Type Np and Type Ns Streams.*

a. Except as provided in this subsection, no alteration of a Type Np or Ns stream shall be allowed except as otherwise provided by EMC 19.37.050; or

b. The planning director may, using the review process described in EMC Title 15, Local Project Review Procedures, allow alteration or relocation of Type Np and Ns streams under the following conditions:

(1) Stream and buffer functions in the relocated/altered stream section must be equal to or greater than the functions provided by the stream and buffer prior to relocation/alteration;

(2) The equivalent base flood storage volume shall be maintained;

(3) There shall be no impact to local ground water;

(4) There shall be no increase in water velocity;

(5) There is no interbasin transfer of water;

(6) The relocation shall occur on site and shall not result in additional encumbrances on neighboring properties unless necessary easements and waivers are obtained from affected property owners;

(7) The relocation maintains or enhances existing connections to other critical areas and priority habitats.

c. *Stream Crossings.* Stream crossings are regulated by the Washington State Department of Fish and Wildlife (WDFW). Stream crossings shall only be permitted as provided by EMC 19.37.050 or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access. Bridging may be required when necessary to protect significant stream functions. If a culvert is allowed, the design and installation must be approved by WDFW.

4. *Watershed Management Plans.* The city shall not allow relocation or alteration of any Type F stream located within an area where an adopted watershed management plan does not allow

for stream alteration or relocation, except when allowed by EMC 19.37.050, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

B. *Compensating for Stream Impacts.* Stream system and buffer alteration, when allowed by this chapter, shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with this section.

4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, nonnative vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing tightlined or culverted portions of a stream from pipes/culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functions exists.

5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as compensatory mitigation for destruction of the functions of the altered stream system and to ensure that such functions are replaced.

6. When stream system relocation or compensatory mitigation is allowed, the city shall require that the stream relocation be completed prior to allowing the existing stream to be filled or altered.

7. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.

8. The city may apply additional conditions or restrictions, or require specific construction techniques, in order to minimize impacts to stream systems and their buffers.

9. Stream compensatory mitigation shall not occur in areas having high-quality terrestrial habitat.

C. *Voluntary Daylighting of Streams in Pipes and Culverts.*

1. To encourage daylighting of streams in pipes and culverts, the planning director may modify development standards as set out in subsection C.2 of this section when the applicant submits a plan for daylighting that meets the following criteria:

a. The plan is prepared by a qualified professional;

b. The ecological functions of the daylighted waters and adjacent area are improved so the new riparian corridor is compatible with and protects the ecological functions of the

existing riparian corridor upstream and downstream and does not contribute to flooding; ecological functions include preventing erosion, protecting water quality, and providing diverse habitat; and

c. If the plan proposes daylighting the pipe or culvert in a different location on the parcel from its current location or off the parcel, the ecological functions required in subsection C.1.b of this section are provided as effectively as they would be without the relocation.

2. If the planning director finds the conditions in subsection C.1 of this section are met, the director may modify the following development standards. The modification shall be the minimum to provide sufficient area to meet the standards in subsection C.1 of this section and shall be in the following order of priority:

a . Yard and/or setback requirements on the property may be reduced, unless reducing them is injurious to safety.

b. The stream and adjacent buffer area may count toward required landscaping.

c. The stream and adjacent buffer area may count toward open space requirements of EMC 19.09.050.

d. Building heights may be increased.

e. Buffers widths and other development standards of this chapter may be reduced or modified as necessary to encourage enhancement of fish and wildlife conservation area functions and values.